

No. 12660

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United States  
Court of Appeals  
for the Ninth Circuit.

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HARBOR PLYWOOD CORPORATION,  
a Corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of Record

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Petition to Review a Decision of the Tax Court  
of the United States

FILED

NOV 24 1950

PAUL P. O'BRIEN,

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

CLERK



No. 12660

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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## APPEARANCES

For Petitioner:

ALFRED J. SCHWEPPE, ESQ.

WARREN A. DOOLITTLE, ESQ.

For Respondent:

WILLIAM E. KOKEN, ESQ.

## DOCKET ENTRIES

1948

- Oct. 20—Petition received and filed by taxpayer. Taxpayer notified. Fee paid.
- Oct. 21—Copy of petition served on General Counsel.
- Dec. 8—Answer filed by General Counsel.
- Dec. 8—Request for hearing in Seattle, Wash., filed by General Counsel.
- Dec. 9—Notice issued placing proceeding on Seattle, Wash., calendar. Service of answer and request made.

1949

- Apr. 14—Hearing set June 13, 1949, Seattle, Wash.
- May 20—Notice changing place of hearing to Tacoma, Wash.
- June 14—Hearing had before Judge LeMire on merits. Stipulation of facts. Appearance of Warren A. Doolittle filed. Motion to amend petition and amendment filed and granted. Answer to amendment to petition and amendment to respondent's answer filed. Petitioner's answer filed. Petitioner's brief July 29, 1949; Respondent's brief Aug. 29, 1949; Petitioner's reply Sept. 19, 1949.
- July 28—Brief filed by taxpayer (2). Copy has been served. 1 copy received 8/1/49; served 8/2/49. Copy served.



1949

- Aug. 2—Transcript of hearing 6/14/49 filed.  
Aug. 29—Brief filed by General Counsel.  
Sept. 19—Reply brief filed by taxpayer, with receipt of service of reply brief on general counsel. Copy served 9/20/49.

1950

- Jan. 31—Findings of fact and opinion rendered—Judge LeMire. Decision will be entered under Rule 50. Copy served 2/1/50.  
Apr. 21—Agreed computation filed.  
Apr. 25—Decision entered, Judge LeMire, Division No. 5.  
July 7—Motion for order fixing amount of bond not to exceed \$62,280.84 filed by taxpayer.  
July 12—Bond in the amount of \$100,000.00 approved and ordered, filed.  
July 17—Petition for review by U. S. Court of Appeals, 9th Circuit, with assignments of error, filed by taxpayer.  
July 19—Proof of service filed.  
July 26—Proof of service of petitioner for review filed.  
Aug. 7—Praecipe for record, with proof of service thereon, filed by taxpayer.

The Tax Court of the United States

Docket No. 20729

HARBOR PLYWOOD CORPORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### PETITION

The above-named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:90D:JHQ, (Office of Internal Revenue Agent in Charge, Seattle Division, 305A Jones Building, 1331 Third Avenue, Seattle, Washington) dated July 23, 1948 (Form 1279), and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation incorporated on May 5, 1929, under the laws of the State of Delaware, with principal office located at Hoquiam, Washington. The return for the periods here involved were filed with the Collector for the District of Washington.

2. The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the petitioner on July 23, 1948.

3. The taxes in controversy are income taxes and excess profits taxes for the calendar years 1943



and 1944, and income taxes for the calendar year 1945, and are in the following amounts:

(a) For the year 1943, over-assessment of income taxes \$32,618.87 and deficiency in excess profits taxes \$95,028.66, or a net deficiency for 1943 of \$62,409.79; for the year 1944, an over-assessment of income taxes of \$2,321.25 and a deficiency of excess profits taxes of \$17,407.58, or a net deficiency for the year 1944 of \$15,086.33; for the year 1945, deficiency of income tax of \$24,219.57, all as more particularly set forth on Exhibit "B" attached hereto.

(b) The taxpayer, after receipt of said Notice of Deficiency and by execution of Form 874 on September 8, 1948, waived and consented to the assessment and collection of the following deficiencies and has accepted the following over-assessments as correct: For the year 1943, over-assessment of income taxes \$26,425.93 and deficiencies of excess profits taxes \$73,098.95, or a net deficiency for the calendar year 1943 of \$46,673.02; for the year 1944, over-assessment of income taxes \$2,411.86 and over-assessment of excess profits tax \$800.12, or a total over-assessment for 1944 of \$3,211.98; for the year 1945, deficiency of income tax of \$17,820.79; that the total net deficiencies to which a consent was given by the taxpayer for the three years 1943, 1944 and 1945 was \$61,281.83; that said \$61,281.83 has been paid by voluntary settlement payments made on December 26, 1945, of \$32,455.94 and further voluntary payment of \$28,825.89 made on September 22,

1948, all as more particularly set forth on Exhibit "C" attached hereto. (That the Bureau of Internal Revenue has advised the petitioner that it can not schedule an over-assessment in an amount greater than that shown in the Notice of Deficiency, nor can it schedule an over-assessment in place of a deficiency in the manner set forth by petitioner on Form 874; that, accordingly, taxpayer will immediately file protective claims for refund for such over-assessments.)

(c) That the resulting deficiencies and over-assessments asserted by the respondent and disputed by the petitioner are: For the year 1943, income tax over-assessment of \$6,192.94 and excess profits tax deficiency of \$21,929.71, or a net deficiency for 1943 of \$15,736.77; for the year 1944, income tax deficiency of \$90.61, excess profits tax deficiency of \$18,207.70, or a net deficiency for 1944 of \$18,298.31; for the year 1945, a deficiency of income tax of \$6,398.78; or a total disputed net deficiency for the three years of \$40,433.86.

4. The determination of the tax set forth in said Notice of Deficiency is based upon the following errors:

(a) The respondent held that the petitioner received taxable income as defined in Section 22 (a), Section 41 and Section 42 (a) of the Internal Revenue Code in the taxable year ended December 31, 1943, in the amount of \$11,591.36, as evidenced by credit memorandum dated March 31, 1943, issued

by Pacific Forest Industries in petitioner's favor, representing petitioner's proportionate share of refund of excessive commissions charged the members by the Association during the Association's fiscal year April 1, 1942, to March 31, 1943, based on plywood supplied by petitioner to the Association and shipped by the Association during the latter's fiscal year. Petitioner reported no income from this source and respondent increased petitioner's income by the above amount.

(b) Respondent held that petitioner received taxable income as defined in Section 22 (a), Section 41 and Section 42 (a) of the Internal Revenue Code in the taxable year ended December 31, 1944, in the amount of \$33,113.41, as evidenced by credit memorandum dated March 31, 1944, issued by Pacific Forest Industries in petitioner's favor, representing petitioner's proportionate share of refund of excessive commissions charged the members by the Association during the Association's fiscal year April 1, 1943, to March 31, 1944, based on plywood supplied by petitioner to the Association and shipped by the Association during the latter's fiscal year. Petitioner reported income from this source in its return in the amount of \$11,591.36 and respondent, therefore, increased net income by the difference of \$21,522.05.

(c) Respondent held that petitioner received taxable income as defined in Section 22 (a), Section 41 and Section 42 (a) of the Internal Revenue Code in the taxable year ended December 31, 1945, in

the amount of \$15,996.95, as evidenced by credit memorandum dated March 31, 1945, issued by Pacific Forest Industries in petitioner's favor, representing petitioner's proportionate share of refund of excessive commissions charged the members by the Association during the Association's fiscal year April 1, 1944, to March 31, 1945, based on plywood supplied by the petitioner to the Association and shipped by the Association during the latter's fiscal year. Petitioner reported no income from this source and the respondent held net income to be increased by the above amount;

when, in fact, in each of the tax years in question the petitioner had not received taxable income as defined in Section 22 (a), Section 41 and Section 42 (a) of the Internal Revenue Code in the amount of said credit memoranda, and, therefore, such refunds should not have been accrued.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Pacific Forest Industries is a cooperative association, organized under the laws of the State of Washington, and licensed to do business under the Export Trade Act; that this Association at all times material herein was engaged in the exporting of plywood for its members and operated on a fiscal year accounting period ending March 31st of each year; that after the end of its fiscal year, its funds in excess of annual expenses are computed and returned to its members, if and when funds are available, on the basis of footages of plywood delivered



by each member to the Association during the preceding fiscal year.

(b) That the petitioner, Harbor Plywood Corporation, is an accrual basis taxpayer reporting on a calendar year basis.

(c) That the petitioner, Harbor Plywood Corporation, is a member of Pacific Forest Industries.

(d) That Pacific Forest Industries' refund to petitioner for Pacific Forest Industries' fiscal year ended March 31, 1944, was not made until January 29, 1946, and that the refund for the fiscal year ending March 31, 1945, was not made until July 23, 1946, for the reason that it had been held by the Treasury Department, Procurement Division, which purchased all of Pacific Forest Industries' sales during the war years here in question; that Pacific Forest Industries' income was subject to renegotiation under the Renegotiation Act, as amended, notwithstanding vigorous efforts made by Pacific Forest Industries to be exempted from renegotiation; that the refund to petitioner for Pacific Forest Industries' fiscal year ending March 31, 1943, in the amount of \$11,591.36, was made on December 12, 1944, and reported by petitioner for its year ending December 31, 1944, for the reason that Pacific Forest Industries' income for the fiscal year ended March 31, 1943, would not be renegotiated.

(e) That because Pacific Forest Industries was held subject to renegotiation, it did not pay any

refunds whatsoever to the member mills for its fiscal years ending March 31, 1944, and March 31, 1945, until either renegotiation proceedings were completed or until the statutory period had run against renegotiation; that until such time had elapsed, it was legally uncertain what, if any, refund could be made by Pacific Forest Industries to the member mills; that during that period, petitioner had no enforceable claim against Pacific Forest Industries because any such refund was contingent, remote, indefinite and wholly indeterminate as to amount and had not been credited to or set apart for the taxpayer without restriction.

(f) That, because of the possibility of renegotiation, such credit memoranda were not set apart to the petitioner without any substantial limitation or restriction as to the time of payment or condition upon which payment was to be made and were not made available to the petitioner so that petitioner might draw such credit amounts at any time after the date of such memoranda and the receipt thereof was not brought within the petitioner's own control and disposition.

(g) That the petitioner did not constructively receive such refunds at the time and in the year when such memoranda were issued; that petitioner consistently reported as income the refunds from Pacific Forest Industries only at the time the cash was received for the aforementioned reasons and on the grounds that the taxpayer had no claim on, or unconditional right to, receive a determinate amount of these funds until the time of actual cash receipt.

Wherefore, petitioner prays that this court may hear the proceeding and find that the respondent's proposed adjustment of income in respect of refunds from Pacific Forest Industries for the Petitioner's calendar years 1943, 1944 and 1945 should not be made and that the proposed deficiencies for those years resulting from the respondent's adjustments should be corrected to reflect this change, and that the petitioner's computation of adjusted over-assessments and deficiencies for the years 1943, 1944 and 1945 as set forth on Exhibit "C" be approved.

/s/ ALFRED J. SCHWEPPE,  
Counsel for Petitioner, Har-  
bor Plywood Corporation.

State of Washington,  
County of Grays Harbor—ss.

G. O. Baker, Jr., being duly sworn, says that he is the Comptroller of Harbor Plywood Corporation, the petitioner above named; that he is an officer of said corporation and is duly authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ G. O. BAKER, JR.

Subscribed and sworn to before me this 16th day of October, 1948.

[Seal] /s/ L. A. ST. ROMAIN,  
Notary Public in and for the State of Washington,  
residing at Hoquiam, Washington.

## Exhibit "A"

Form 1279 (Rev. Mar. 1946)

SN-IT-7

[Seal]

Office of Internal Revenue Agent in Charge  
Seattle Division,  
305 A Jones Building  
1331 Third Avenue

IT: 90D: JEQ

Treasury Department  
Internal Revenue Service  
Seattle 1, Washington

July 23, 1948

Harbor Plywood Corporation  
Box 300  
Hoquiam, Washington

Gentlemen:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1945, discloses a deficiency of \$24,219.57, and that the determination of your excess profits tax liability for the taxable years ended December 31, 1944, and December 31, 1945, discloses a deficiency of \$112,436.24, and that the determination of your income tax liability for the taxable years ended December 31, 1943, and December 31, 1944, discloses an over-assessment of \$34,940.12, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.



Within 90 days (not counting Saturday, Sunday, or legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington, for the attention of IT:90D:JEQ. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,  
Commissioner.

By /s/ S. R. STOCKTON,  
Internal Revenue Agent in  
Charge.

JEQ:mts

Enclosures:

Statement

Form of Waiver and Acceptance.

## EXHIBIT "B"

Harbor Plywood Corporation

Box 300

Hoquiam, Washington

Tax Liability for the Taxable Years Ended December 31, 1943,  
December 31, 1944, and December 31, 1945

Year	Liability	Assessed Income Tax	Deficiency	Over- assessment
1943.....	\$129,776.21	\$162,395.08		\$32,618.87
1944.....	118,369.30	120,690.55		2,321.25
1945.....	90,078.97	65,859.40	\$ 24,219.57	
	<hr/>	<hr/>	<hr/>	<hr/>
Total.....	\$338,224.48	\$348,945.03	\$ 24,219.57	\$34,940.12
Excess Profits Tax				
1943.....	\$225,388.25	\$130,359.59	\$ 95,028.66	
1944.....	136,200.54	118,792.96	17,407.58	
	<hr/>	<hr/>	<hr/>	
Total.....	\$361,588.79	\$249,152.55	\$112,436.24	

## EXHIBIT "C"

## Harbor Plywood Corporation

Computation of Net Deficiencies (Over-Assessments) for the Calendar Years 1943, 1944 and 1945, Based on Revenue Agent's Adjustments Other Than Pacific Forest Industries Refund Adjustments

	Adjusted Tax Liabilities	Taxes Previously Assessed (per returns)	Total Deficiencies (over-assessments)	Voluntary Settlement 12-26-45		Net Deficiencies (over-assessments)
				Deficiencies	(over-assessments)	
Year 1943—						
Income taxes .....	\$135,969.16	\$162,395.09	\$ (26,425.93)	\$ (696.73)		\$ (25,729.20)
Excess profits taxes....	203,458.54	130,359.59	73,098.95	16,881.14		56,217.81
Year 1944—						
Income taxes .....	118,278.69	120,690.55	(2,411.86)	(817.22)		(1,594.64)
Excess profits taxes....	117,992.84	118,792.96	(800.12)	17,088.75		(17,888.87)
Year 1945—						
Income tax .....	83,680.19	65,859.40	17,820.79	.....		17,820.79
			<u>\$ 61,281.83</u>	<u>\$32,455.94</u>		<u>\$ 28,825.89*</u>

\* Paid 9/22/48.

Received and filed T.C.U.S. October 20, 1948.

Served October 21, 1948.

[Title of Tax Court and Cause.]

### ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits that the notice of deficiency in controversy in the present proceeding was mailed to petitioner on July 23, 1948. Denies that Exhibit "A" attached to the petition represents a complete copy of said notice of deficiency.

3. Admits that the taxes in controversy are excess profits taxes for the calendar years 1943 and 1944, and income taxes for the calendar year 1945. Denies that over-assessments in income taxes or other taxes than those specified are in controversy before the Tax Court in this proceeding.

(a) Admits that for the years 1943 and 1944 the deficiency notice determined deficiencies and over-assessments in the amounts set forth in paragraph 3 (a) and shown in Exhibit "B" attached to the petition. Denies that the petitioner has placed in controversy in this proceeding the entire

deficiencies which have been determined as set forth therein. Denies the remaining allegations contained in subparagraph (a) of paragraph 3 of the petition.

(b) and (c). For lack of information from which to determine the truth or correctness of the allegations contained in subparagraphs (b) and (c) of paragraph 3 of the petition, the same are denied.

4. (a), (b) and (c). Denies that in determining the deficiencies as set forth in the statutory notice the respondent committed any errors, and specifically denies that the respondent erred as alleged in subparagraphs (a), (b) and (c) and the remaining provisions of paragraph 4 of the petition.

5. (a). Denies the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) and (c). Admits the allegations contained in subparagraphs (b) and (c) of paragraph 5 of the petition.

(d), (e), (f), and (g). Denies the allegations contained in subparagraphs (d), (e), (f) and (g) of paragraph 5 of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's deter-



mination be approved.

/s/ CHARLES OLIPHANT, DLB

Chief Counsel, Bureau of

Internal Revenue.

Of Counsel:

WILFORD H. PAYNE,

Division Counsel,

DOUGLAS L. BARNES,

Special Attorney,

Bureau of Internal Revenue.

Received and filed T. C. U. S. December 8, 1948.

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[Title of Tax Court and Cause.]

### MOTION TO AMEND PETITION

Comes now the petitioner and moves this Court for an order authorizing the petitioner to amend its petition herein in the form and manner set forth on the copy of the proposed Amended Petition attached hereto.

This Amended Petition is necessary (1) to set forth more fully the material portions of the statement attached to the Notice of Deficiency to which the petitioner's assignments of error are directed, as required by Rule 7(c)(4)(I); and (2) to set forth the petitioner's alternative contention as to the proper time for including the disputed items in the petitioner's taxable income, as now alleged

in paragraph 5(h) of the attached Amended Petition.

/s/ ALFRED J. SCHWEPPE,  
Counsel for Petitioner, Harbor Plywood Corporation.

No objection:

/s/ CHARLES OLIPHANT, D.L.B.  
Counsel for Respondent.

Granted June 13, 1949. C. P. LeMire, Judge.

Filed T.C.U.S. June 13, 1949.

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[Title of Tax Court and Cause.]

### AMENDMENT TO PETITION

Comes now the petitioner and, pursuant to leave of the Court obtained herein, amends its Petition heretofore filed herein in the following particulars:

1. Paragraph 2 of the Petition shall be amended by adding the following:

The material portions of the statement attached to the Notice of Deficiency to which the petitioner's assignments of error are directed are as follows:

(a) As to the petitioner's taxable year ended December 31, 1943:

“(f) It is held that you received taxable income as defined in Section 22(a), Section 41 and Section 42(a) of the Internal Revenue Code, in this year in the amount of \$11,591,36,

as evidenced by credit memorandum dated March 31, 1943, issued by Pacific Forest Industries in your favor, representing your proportionate share of refund of excessive commissions charged the members by the association during the association's fiscal year April 1, 1942, to March 31, 1943, based on plywood supplied by you to the association and shipped by them during this period. You reported no income from this source; therefore net income is increased by the above amount."

(b) As to the petitioner's taxable year ended December 31, 1944:

"(f) It is held that you received taxable income as defined in Section 22(a), Section 41 and Section 42(a) of the Internal Revenue Code, in this year in the amount of \$33,113.41, as evidenced by credit memorandum dated March 31, 1944, issued by Pacific Forest Industries in your favor, representing your proportionate share of refund of excessive commissions charged the members by the association during the association's fiscal year April 1, 1943, to March 31, 1944, based on plywood supplied by you to the association, and shipped by them during this period. You reported income from this source in the return in the amount of \$11,591.36; therefore, net income is increased by the difference of \$21,522.05."



(c) As to petitioner's taxable year ended December 31, 1945:

“(f) It is held that you received taxable income as defined in Section 22(a), Section 41 and Section 42(a) of the Internal Revenue Code, in this year in the amount of \$15,996.95, as evidenced by credit memorandum dated March 31, 1945, issued by Pacific Forest Industries in your favor, representing your proportionate share of refund of excessive commissions charged the members by the association during the association's fiscal year April 1, 1944, to March 31, 1945, based on plywood supplied by you to the association, and shipped by them during this period. You reported no income from this source; therefore net income is increased by the above amount.”

2. Paragraph 5 of the Petition shall be amended by adding the following sub-paragraph (h) thereto:

(h) That, in the alternative, each credit memorandum issued by Pacific Forest Industries to the petitioner, Harbor Plywood Corporation, was not includable in any event in the petitioner's taxable income for any period prior to the year during which the statute of limitations expired on the renegotiability of Pacific Forest Industries.

Wherefore petitioner renews the prayer of his original Petition herein and adds thereto the prayer that, in the alternative, the amount of each credit memorandum be not included in any event in the

petitioner's taxable income for any period prior to the year during which the statute of limitations expired on the renegotiability of Pacific Forest Industries.

/s/ ALFRED J. SCHWEPPE,  
Counsel for Petitioner, Harbor Plywood Corporation.

State of Washington,  
County of Grays Harbor—ss.

G. O. Baker, Jr., being duly sworn, says that he is the Comptroller of Harbor Plywood Corporation, the petitioner above named; that he is an officer of said corporation and is duly authorized to verify the foregoing Amended Petition; that he has read the foregoing Amended Petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ G. O. BAKER, JR.

Subscribed and Sworn to before me this 27th day of May, 1949.

[Seal] /s/ L. A. ST. ROMAIN,  
Notary Public in and for the  
State of Washington.

Filed T.C.U.S. June 13, 1949.

[Title of Tax Court and Cause.]

ANSWER TO AMENDMENTS TO PETITION  
AND AMENDMENT TO RESPONDENT'S  
ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and in answer to the amended petition filed at the hearing herein, and for further answer, admits, alleges and denies as follows:

1. Paragraph 2 of the answer is amended by adding the following at the end thereof: "(a), (b), and (c). Admits the allegations contained in subparagraphs (a), (b) and (c) of paragraph 2 of the petition, as added by petitioner's amendments to petition."

2. Paragraph 5 of the answer is amended by adding the following at the end thereof: "(h). Admits that petitioner's alternative contention is that each credit memorandum issued by Pacific Forest Industries to the petitioner, Harbor Plywood Corporation, was not includible in any event in the petitioner's taxable income for any period prior to the year during which the statute of limitations expired on the renegotiability of Pacific Forest Industries, as alleged in subparagraph (h) of paragraph 5 of the petition, as added by petitioner's amendments to the petition."

3. The respondent's answer is hereby further

amended by adding to paragraphs 1 to 6, inclusive, thereof the following additional paragraph: "7. For further answer to the petition as amended by petitioner's amendments to petition, the respondent alleges that in the event the Court shall determine that the aforesaid credit memorandums constitute accrued income of the petitioner for the year during which the statute of limitations expired on the renegotiability of the Pacific Forest Industries, instead of income for the years in which the said credit memorandums were issued, then there is a deficiency in petitioner's excess profits tax for 1943 in the amount of \$99,915.35, instead of \$95,028.66 as set forth in the deficiency notice, or an additional deficiency in the said tax in the amount of \$4,886.69, and a deficiency in petitioner's income tax for 1945 in the amount of \$31,066.15, instead of \$24,219.57 as set forth in the deficiency notice, or an additional deficiency in the said tax in the amount of \$6,846.58."

Wherefore, respondent respectfully prays that the petition as amended be denied and, if the Court shall determine that the aforesaid credit memorandums constitute accrued income of the petitioner for the year during which the statute of limitations expired on the renegotiability of Pacific Forest Industries, instead of income for the years in which the said credit memorandums were issued, that the Court determine also that there are increased deficiencies in petitioner's excess profits tax and income tax for 1943 and 1945, respectively, in the



amounts set forth above, claim for which is hereby made pursuant to the provisions of Section 272(e) of the Internal Revenue Code.

/s/ CHARLES OLIPHANT, DLB

Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

WILFORD H. PAYNE,  
Division Counsel.

DOUGLAS L. BARNES,  
W. E. KOKEN,  
Special Attorneys,  
Bureau of Internal Revenue.

Filed T.C.U.S. June 14, 1949.

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[Title of Tax Court and Cause.]

### STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that the following facts are true and may be taken and considered by the Court as offered in evidence by the parties to this proceeding.

1. The petitioner is a corporation organized on May 5, 1929, under the laws of the State of Delaware with principal office located at Hoquiam, Washington, and it is engaged in the business of manufacturing and distributing plywood, doors and building materials. It is an accrual basis taxpayer reporting on a calendar year basis, and the returns

for the periods here involved were filed with the Collector for the District of Washington.

2. The notice of deficiency was mailed to the petitioner on July 23, 1948. The taxes in controversy are excess profits taxes for the calendar years 1943 and 1944 in the amounts of \$95,028.66 and \$17,407.58, respectively, and income taxes for the calendar year 1945 in the amount of \$24,219.57, as shown in the statement accompanying the respondent's notice of deficiency.

3. Pacific Forest Industries is a cooperative association organized under the laws of the State of Washington for the purpose of engaging solely in the export of plywood and other forest products, as authorized by the provisions of the Webb Export Trade Act, for its members. The association operates on a fiscal year accounting period ending March 31, and is a corporation under the laws of the State of Washington.

4. The petitioner, Harbor Plywood Corporation, at all times material herein was a stockholder member of Pacific Forest Industries.

5. Under date of March 31, 1943, Pacific Forest Industries issued a credit memorandum to Harbor Plywood Corporation in the amount of \$11,591.36. The said amount, which is stated on the face of the credit memorandum, represented the petitioner's proportionate share of the refund of excessive commissions charged the members of the association during its fiscal year ending March 31, 1943. The

said \$11,591.36 was not reported as income by the petitioner for its tax year ending December 31, 1943, but was reported as income by the petitioner in its tax year ending December 31, 1944, the same having been paid to petitioner by Pacific Forest Industries on December 12, 1944. A copy of said credit memorandum is attached hereto and marked as "Joint Exhibit 1-A."

6. Under date of March 31, 1944, Pacific Forest Industries issued a credit memorandum to Harbor Plywood Corporation in the amount of \$33,113.41. The said amount, which is stated on the face of the credit memorandum, represented the petitioner's proportionate share of the refund of excessive commissions charged the members of the said association during its fiscal year ending March 31, 1944. The said \$33,113.41 was not reported as income by the petitioner for its tax year ending December 31, 1944, but was reported as income by the petitioner in its tax year ending December 31, 1946, the same having been paid to petitioner by Pacific Forest Industries on January 29, 1946. A copy of said credit memorandum is attached hereto and marked as "Joint Exhibit 2-B."

7. Under date of March 31, 1945, Pacific Forest Industries issued a credit memorandum to Harbor Plywood Corporation in the amount of \$15,996.95. The said amount, which is stated on the face of the credit memorandum, represented the petitioner's proportionate share of the refund of excessive commissions charged the members of the association

during its fiscal year ending March 31, 1945. The said \$15,996.95 was not reported as income by the petitioner for its tax year ending December 31, 1945, but was reported as income by the petitioner in its tax year ending December 31, 1946, the same having been paid to petitioner by Pacific Forest Industries on July 23, 1946. A copy of said credit memorandum is attached hereto and marked as "Joint Exhibit 3-C."

8. The issuance and the amounts of the said credit memorandums were governed by the Articles of Incorporation and By-Laws of the Pacific Forest Industries, a copy of which as they existed at all times material herein are attached hereto as "Joint Exhibit 4-D."

9. Subject to the right of the petitioner, which is hereby noted and reserved, to object to its relevancy, it is further stipulated that the face amount of each of the said credit memorandums was credited on the books of the Pacific Forest Industries to the petitioner Harbor Plywood Corporation as of the date of issuance, and was also claimed by the Pacific Forest Industries and allowed by the respondent as an exclusion from gross income in the income tax returns of Pacific Forest Industries.

10. The question before the Court is: Does the face amount of each credit memorandum constitute a part of the taxable income of the petitioner Harbor Plywood Corporation (1) for the year in which issued by Pacific Forest Industries, as held by the



respondent; or (2) for the year during which the statute of limitations expired on the renegotiability of Pacific Forest Industries, or (3) for the year in which they were paid to petitioner in cash by Pacific Forest Industries? The petitioner contends that the amount of each credit memorandum is includible in the petitioner's income for the year in which they were paid to petitioner in cash by Pacific Forest Industries, or, in the alternative, that it is not includible in any event in the petitioner's taxable income for any period prior to the year during which the statute of limitations expired on the renegotiability of Pacific Forest Industries. The respondent contends that the amount of each credit memorandum is includible in the petitioner's taxable income for the year in which issued, or, in the alternative, that it is includible in any event in the petitioner's taxable income for the year during which the statute of limitations expired on the renegotiability of Pacific Forest Industries. For Pacific Forest Industries' fiscal year ending March 31, 1943, the said period of limitations expired on or about March 31, 1944; for its fiscal year ending March 31, 1944, the said period expired on or about May 11, 1945; and for its fiscal year ending March 31, 1945, the said period expired on or about May 29, 1946, so that if the Court should determine that the aforesaid credit memorandums constitute taxable income of the petitioner Harbor Plywood Corporation for the year during which the statute of limitations expired on the renegotiability of Pacific Forest Industries, the aforesaid credit memoran-

dums will constitute taxable income of the petitioner Harbor Plywood Corporation in the amounts and for the years as follows:

Date of Credit Memorandum	Amount	Year Accruable in Petitioner's Income
March 31, 1943.....	\$11,591.36	1944
March 31, 1944.....	33,113.41	1945
March 31, 1945.....	15,996.95	1946

11. In the event that the Court should hold that the aforesaid credit memorandums constitute accrued income of the petitioner in the amounts and for the years as set forth in paragraph 10 above, as contended by both parties in the alternative, instead of income for the years in which the said credit memorandums were issued as held by the respondent, then there is a deficiency in petitioner's excess profits tax for 1943 in the amount of \$99,915.35 instead of \$95,028.66 as set forth in the deficiency notice, or an additional deficiency in the said tax in the amount of \$4,886.69, and a deficiency in petitioner's income tax for 1945 in the amount of \$31,066.15 instead of \$24,219.57 as set forth in the deficiency notice, or an additional deficiency in the said tax in the amount of \$6,846.58; and it is hereby further stipulated and agreed that claim for the said increased deficiencies has been asserted by the respondent in accordance with the provisions of Section 272(e), Internal Revenue Code.

12. Subject to the right of the respondent, which is hereby noted and reserved, to object to their relevancy, the following additional documents are attached hereto as joint exhibits and included as a part of this stipulation:

## Joint Exhibit 5-E

Letter dated January 15, 1943, from War Department Price Adjustment Board addressed to Pacific Forest Industries, and two enclosures, respecting renegotiation proceedings.

## Joint Exhibit 6-F

Letter dated April 24, 1943, from Pacific Forest Industries addressed to nineteen of its members enclosing credit memorandum.

## Joint Exhibit 7-G

Letter dated June 4, 1943, from Procurement Division, Treasury Department, addressed to Pacific Forest Industries, and one enclosure, respecting renegotiation proceedings.

## Joint Exhibit 8-H

Letter dated June 15, 1943, from Procurement Division, Treasury Department addressed to Pacific Forest Industries.

## Joint Exhibit 9-I

Letter dated March 30, 1944, from Mr. Alfred J. Schweppe addressed to Henry Relf of Pacific Forest Industries and one enclosure respecting the renegotiation of Pacific Forest Industries.

## Joint Exhibit 10-J

Memorandum dated May 4, 1944, from Pacific Forest Industries to its stockholders enclosing balance sheet and statement of operations for fiscal year ending March 31, 1944.

## Joint Exhibit 11-K

Letter dated June 21, 1944, from Procurement Division, Treasury Department, addressed to Pacific Forest Industries respecting renegotiation.

## Joint Exhibit 12-L

Letter dated June 26, 1944, from Pacific Forest Industries addressed to Alfred J. Schweppe respecting Pacific Forest Industries' fiscal year ending March 31, 1944.

## Joint Exhibit 13-M

Letter dated June 27, 1944, from Alfred J. Schweppe addressed to Henry Relf respecting renegotiation.

## Joint Exhibit 14-N

Letter dated June 27, 1944, from Alfred J. Schweppe addressed to Henry Relf respecting renegotiation.

## Joint Exhibit 15-O

Letter dated May 4, 1949, from Pacific Forest Industries to Messrs. McMicken, Rupp & Schweppe concerning Joint Exhibit 13-M.

/s/ ALFRED J. SCHWEPPE,  
Counsel for Petitioner.

/s/ CHARLES OLIPHANT, WHP  
Chief Counsel, Bureau of Internal Revenue, Counsel  
for Respondent.



JOINT EXHIBIT 1-A

Pacific Forest Industries  
Exporters of Plywood

Tacoma, Wash., U. S. A.  
March 31, 1943.

Shipped to	Sold to Harbor Plywood Corp.
Vessel	Address Hoquiam, Washington
Your Order No.	Our Order No.

Credit Memorandum

To additional price of \$2.531296 per  
thousand square feet on 4,579,221 square  
feet  $\frac{3}{8}$ " rough basis, supplied by you and  
shipped by us during the period April 1,  
1942, through March 31, 1943.....\$11,591.36

Cr. Misc. Income

[Illegible date.]

E. & O. E.

PACIFIC FOREST  
INDUSTRIES,

By .....

JOINT EXHIBIT 2-B

Pacific Forst Industries  
Exporters of Plywood

Tacoma 2, Wash., U. S. A.  
March 31, 1944.

Shipped to	Sold to Harbor Plywood Corp.
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M. Sekstrom of Olympia Veneer Company

V. A. Nyman of Aberdeen Plywood Company  
each a citizen of the State of Washington, and

Neil Malarkey of Plylock Corporation

James A. Malarkey of M and M Plywood Corporation

Arthur J. Gram of Vancouver Plywood & Veneer Co.

each a citizen of the State of Oregon, hereby associate themselves together as a co-operative association pursuant to the provisions of Chapter 19 of Laws of Washington, 1913, and of Chapter 99 of Laws of Washington, Extraordinary Session, 1925, and do hereby make, subscribe and acknowledge, in triplicate, the following articles of association:

#### Article I.

The name of this association shall be Pacific Forest Industries.

#### Article II.

The sole purpose for which this association is organized is to engage in the export trade in plywood and other forest products and the promotion and development of such trade, and to that end to do any and all things lawful and proper to be done therein, as authorized by the provisions of the 'Webb Export Trade Act.'

## Article III.

The principal place of business of the association shall be Tacoma, Pierce County, Washington.

## Article IV.

The term of the existence of this association shall be three years.

## Article V.

The amount of the capital stock of the association shall be 250 shares, each share of the par value of \$100.00, making a total capitalization of \$25,000.00. Said stock shall be subscribed only by concerns engaged in the manufacture of plywood or by their duly authorized representative, and said stock shall not be assignable, except to the association, without the unanimous consent of all stockholders.

## Article VI.

The association shall be managed by a board of thirteen trustees who shall be elected for a term of one year. The trustees for the period until the first election shall be:

E. E. Westman

Craig L. Spencer

Neil Malarkey

W. C. Bailey

James A. Malarkey

Arthur J. Gram

A. R. Wuest

Philip Garland

E. W. Daniels

M. Sekstrom

N. O. Cruver

V. A. Nyman

J. R. Robinson

In Witness Whereof, we have signed these Ar-

## Article I.

## Membership

1. There shall be two classes of membership of this Association:

(a) Shareholder member, hereinafter called the "member," and

(b) Non-shareholder member, hereinafter called "associate member."

2. Each concern (to wit, operating plant) engaged in the manufacture of Western softwood plywood in either of the States of Washington or Oregon may become either a member or an associate member of this Association upon the two-thirds vote of the Executive Committee.

3. To become a member, such concern shall subscribe and pay for, at par, 5 shares of the capital stock of this Association for each 1,000,000 feet capacity, or fraction thereof, of plywood on a  $\frac{3}{8}$  inch rough basis monthly, of such concern, and shall have all rights of membership as set forth in these by-laws; provided that the Board of Trustees or the Executive Committee may change the foregoing formula, from time to time in its discretion, by reducing or increasing the number of shares per 1,000,000 feet as aforesaid to be held by a member, so as to keep the total membership within the authorized capital stock of the association, and so as to have the fullest possible amount of the authorized capital stock standing; and that the Board of Trustees or

the Executive Committee may authorize the call and redemption, or issue, of any stock required to be called and redeemed, or issued, by reason of such change in the foregoing formula. Any change in the foregoing formula shall be incorporated in an appropriate resolution incorporated in the minutes of the association and notation thereof made on the margin of this by-law.

4. Each member, regardless of the number of shares of stock owned, shall be entitled to only one vote at stockholders' meetings. Each member shall make formal appointment of its representative to vote its stock at all stockholders' meetings, provided that an alternative appointment, in writing, may be made by the member at any time.

5. Such concern not a member of this association may become an associate member upon application approved by the Executive Committee.

6. Associate members shall have no vote in the affairs of the Association nor representation on its Board of Directors, and shall not be entitled to be included in the allocation schedule hereinafter provided for, and shall only be entitled to receive such orders from the Association as are not filled by members.

7. An associate member may become a member by subscribing and paying for, at par, the required number of shares of the Association.



2. Immediately after the annual meeting of the members the trustees shall meet and organize.

3. Special meetings of the members may be called by either the President or the Managing Director, and shall be called by the President upon written request of any five members. Five days' written notice of such meetings shall be given to the members by letter or wire.

4. Special meetings of the Board of Trustees, or of the Executive Committee hereinafter provided for, may be called by the President or Managing Director upon three days' written notice by letter or wire.

5. Notice of meetings of members, or of the Board of Trustees, or of the Executive Committee, may be waived in writing.

6. At all meetings of members, whether annual or special, no member shall be entitled to more than one vote, irrespective of the number of shares owned by it. At any annual or special meeting of the members a written vote received by mail from any absent member, signed by such member, may be read in such meeting and shall be equivalent to a vote of each of the members so signing, provided such member has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of same is forwarded with and attached to the vote so mailed by such member.



## Article V.

## Board of Trustees

1. Each member shall be entitled to nominate and to have elected one trustee. The Board of Trustees shall manage the business of the Association. The Board of Trustees shall annually elect from the membership of said Board a President, a Vice President, a Secretary, and a Treasurer, and shall appoint a Managing Director, who shall not be a member of said Board. The offices of Secretary and Treasurer may be combined in one person. The Board of Trustees may require the Managing Director, Treasurer, and any Assistant Treasurer or Treasurers, or any other person in any fiduciary capacity, to furnish a bond in such amount as the Board of Trustees may decide.

2. A majority of the members of the Board of Trustees present at any meeting shall constitute a quorum, but no trustee may be represented at any meeting by proxy.

3. The Board of Trustees may appoint an Executive Committee composed of six of the trustees, including the President, Vice President, and Secretary; and such Executive Committee shall possess and exercise, by a majority of all of its members, all the powers and duties of the Board of Trustees when the Board shall not be in session, except to the extent that such powers and duties may be, from time to time, limited by resolution of the board.

## Article VI

## President

The President shall hold office for the period of one year and until his successor is elected. The President shall preside at all meetings of the members and of the Board of Trustees and of the Executive Committee. The President shall be elected from the membership of the Board of Trustees. He shall sign and execute such legal documents as are authorized by the Board of Trustees.

## Article VII

## Vice President

The Vice President, in the absence of the President, shall perform the duties of the President.

## Article VIII.

## Secretary

The Secretary shall attend and keep minutes of all meetings of the members, and of the Board of Trustees, and of the Executive Committee. Under the direction of the Board of Trustees, or the President, he shall affix the seal of the Association to any legal instrument requiring the same. He shall have charge of the stock records and stock certificates, and in general perform all the duties incident to the office of Secretary, subject to the orders of the Board of Trustees.

## Article IX.

## Treasurer

The Treasurer shall have custody of all the funds and securities of the Association which may have come into his hands. When necessary or proper he shall endorse on behalf of the Association, for collection, checks, notes, and other obligations, and shall deposit the same to the credit of the Association in such bank or banks or depository as the Board of Trustees or the Executive Committee may designate. He shall sign all receipts and vouchers for payments made to the Association. Jointly with such other officer as may be designated by the Board of Trustees or the Executive Committee, he shall sign all checks made by the Association, and shall pay out and dispose of the same under the direction of the Board of Trustees or the Executive Committee. He shall sign, with the President or such other person or persons as may be designated for the purpose by the Board of Trustees or the Executive Committee, all bills of exchange and promissory notes of the Association. Whenever required by the Board of Trustees or the Executive Committee, he shall render a statement of his cash account. He shall enter regularly in books of the Association to be kept by him for the purpose, full and accurate account of all monies received and paid by him on account of the Association. He shall at all reasonable times exhibit his books and accounts to any trustee of the Association upon application at the office of the Association during business hours. He

shall perform all acts incident to the position of Treasurer, subject to the control of the Board of Trustees or the Executive Committee. The Board of Trustees or the Executive Committee may appoint the Managing Director Assistant Treasurer. The Managing Director may also appoint, subject to the approval of the Board of Trustees or the Executive Committee, one or more assistant treasurers, to whom may be delegated the above duties.

## Article X.

### Managing Director

The Managing Director shall be the executive head of the Association. He shall have general and exclusive charge and management of its business, subject to the control of the Board of Trustees, and of the Executive Committee. The Managing Director shall appoint the personnel of the office and be responsible for the management thereof. He shall carry out the policies laid down by the Board of Trustees, or the Executive Committee, but neither the Board of Trustees, nor the Executive Committee, nor any member of either the Board or the Committee, shall interfere in personnel matters. The salary of the Managing Director shall be fixed by the Board of Trustees. The Managing Director shall not be engaged in any outside business. If, under any circumstances, the Managing Director during his service shall obtain from any source any compensation, commission or consideration for his services in the plywood business, such compensation, commission



or consideration shall be turned into the Association. The Managing Director shall be employed on a one-year renewable contract. The Managing Director is authorized to sign any contract in the name of the Association if these contracts involve routine matters in the operation of the Association, including the hiring of members of the staff and other services, supplies, and rent, and any contract involving obligation of the Association specifically authorized through action of the Board of Trustees, or the Executive Committee.

## Article XI.

### Allocation and Distribution of Orders

1. The Allocation Schedule shall be fixed in advance at the annual meeting of the Board of Trustees and shall be in force for one year. In the event that increased or decreased capacity occurs during the allocation period in a plant owned or controlled by a member of the Association, such member may make application to the Board of Trustees for an adjustment in its schedule. Such increase or decrease in the allocation schedule shall be determined by the unanimous consent of the Board of Trustees. In the event it cannot be determined by unanimous consent, it shall be submitted for determination and decision to a board of arbitration, as elsewhere in these by-laws provided. Any such adjustment in allocation upon becoming effective shall be adjusted pro rata according to the existing percentages at the time, including the existing percentage of the member to whom additional



or decreased allocation of business is given. Should new members join the Association during the period the allocation is in effect, the Association shall determine, by two-thirds vote of the Board of Trustees, allocation of a certain percentage of the business to such new member or members, and the percentage so allocated shall be adjusted pro rata according to the existing percentages at the time. The allocation of business herein contemplated refers to all Western softwood plywood, whether cold-press or hot-plate. It is understood, however, that any plywood specialty items for export manufactured by any member, whether hardwood or softwood, may be sold by the Association on terms and conditions to be arranged with the producing mill, but such items shall not be included in the allocation schedule.

2. The allocation period with respect to orders shall be quarterly, according to the calendar year. At the end of each quarter, allocation of orders shall be closed and a new allocation period started without any carry-over from the previous period.

## Article XII.

### Quota

Each member shall be entitled to receive, from time to time, orders in accordance with the allocation schedule. The member shall accept and fill the order handed it by the Managing Director, and if in any instance the member declines to fill the order, the order thus declined shall be charged against

and be a part of said member's quota. Upon such declination the Managing Director shall have the order filled by some other member or members, but if all the other members decline said order, the Managing Director may have the order filled by an associate member.

### Article XIII.

#### Tentative Commissions and Return of Excess

1. The Association shall charge and shall be entitled to receive as commission a percentage figured on the minimum price as shall be from time to time decided by the Board of Trustees or the Executive Committee. Said percentage of commission shall be deemed tentative merely and not final, subject to the provisions of paragraph (2) and (3) of this Article. The percentage shall be uniform and the same on all orders placed by the Association with the several members or associate members during a given period of time to be fixed by the said Board of Trustees or the Executive Committee.

2. It is not the purpose of this Association to make a profit; and the commission charged and remuneration received by the Association shall be the cost of transacting its business as sales agent, plus the cost of developing new foreign markets.

3. If during any fiscal year the total commissions and remuneration received by this Association in such fiscal year exceeds the amount that has been incurred during said fiscal year for the payment

by the Association of its expenses, including the cost of market development, then, unless the Board of Trustees by resolution shall direct otherwise, the Treasurer shall, before closing the books as of the close of said fiscal year, return or credit such excess to the accounts of the respective members and associate members, as an addition to the purchase price of the merchandise sold by them, in such proportions as the amount of square footage ( $\frac{3}{8}$ " rough basis) of the orders filled by each member or associate member during such fiscal year bears to the amount of square footage ( $\frac{3}{8}$ " rough basis) of the total orders filled by all members and associate members during such fiscal year.

#### Article XIV.

##### Trade Development

It is the purpose of the Association to improve the plywood export business in foreign countries, expand existing markets, and open up new markets. To that end the Board of Trustees or the Executive Committee shall fix the Association's commission so as to provide adequate amount to be expended in the promotion and development of new foreign markets, and is authorized to expend the same to develop new foreign outlets and to strengthen the position in established markets; to represent the export industry in dealing with federal and local authorities in questions pertaining to the export trade; to bring about uniform and efficient marketing methods, handle claims, and inform its members

in regard to foreign marketing and competitive conditions; to allocate export orders with the view of making the business profitable and at the same time securing the widest possible distribution; to negotiate with foreign organizations or agents, importers and plywood manufacturers in matters of mutual interest; to develop for its members designs and patterns and to assist in developing technical improvements in present methods affecting the manufacture of export products; and to acquire patent rights for the use of its members.

#### Article XV.

##### Trade-mark

The Association may adopt its own trade-mark if this is considered desirable by the Board of Trustees.

#### Article XVI.

##### Right of Visitation

Each member hereby authorizes the Association to audit the export business of such member, and to that end to have free access to all of the records, files, books of entry and account of each member. The audit shall be made by person or persons not directly connected with the plywood business.

#### Article XVII.

##### Arbitration

The annual allocation, if arbitration is necessary,



shall be arbitrated in accordance with the rules of the American Arbitration Association.

Any member dissatisfied with the Managing Director's distribution of orders shall be entitled, within five days after the distribution is announced, to file the complaint in writing, specifying the issue complained of, in which event the issue shall be arbitrated, and the rules of the American Arbitration Association shall apply.

### Article XVIII.

#### Foreign Tariffs

The Association may, at the cost of the Association, represent the membership in obtaining reciprocal and lower foreign tariffs, or in shipping, transportation, or any matters whatsoever having to do with the exportation of plywood.

### Article XIX.

#### Liquidation

Upon the dissolution of the Association, either by voluntary action or upon the expiration of the time of existence of the Association, if not extended by amendment of the Articles of Association, there shall be prompt liquidation of its assets. To that end, the Association shall surrender to the several members any rights claimed by it to the use of the trade-marks severally owned by the members. The assets of the Association shall all be converted into money, which shall be distributed among the members of the Association as follows:



(a) The shares of capital stock of the Association held by the members shall be redeemed at par if there is sufficient money to do so. If not, the money available shall be applied equally per share.

(b) If the money on hand is more than sufficient to redeem at par all of the outstanding stock, then after such redemption the remainder shall be distributed among the then members of the Association, based upon the proportion which the total amount of orders filled by each such member since the Association was organized bears to the total of all such orders of all of the members at the time of such dissolution.

Associate members shall not be entitled to participate in any of the assets of the Association on its dissolution.

#### Article XX.

Notwithstanding anything contained in these by-laws, Pacific Forest Industries shall not:

(a) In its by-laws, contracts with members or associate members, or otherwise, prohibit its members or associate members from selling plywood directly to American exporters, and all by-law and contract provisions to that effect, if any, are hereby rescinded and shall be deemed to be inoperative and void.

(b) Prevent its members and associate members from accepting and filling orders for plywood for export received by them, respectively, from American exporters, without reference to or approval by the Association.

(c) Impose any penalties, forfeitures, or charges upon sales of plywood by its members or associate members to American exporters, or fix or prescribe prices, terms, or conditions of sales to or by American exporters of plywood produced by its members, or take any other action designed to prevent or restrict such sales.

(d) Advertise in foreign countries that it is the sole export representative of the plywood mills in the United States Pacific Northwest, or make any advertising claims to the effect that United States Douglas fir plywood can be purchased in foreign countries only through Pacific Forest Industries and its agents.

For the purposes of this by-law the term "American Exporter" is defined as a citizen of the United States, a partnership in which the partner or partners owning the principal beneficial interest is or are citizens of the United States, or a corporation domiciled in the United States, the majority of the stock of which is owned by citizens of the United States, desiring to purchase plywood for his, their, or its own account for resale in export trade.

#### Article XXI.

These by-laws may be amended at any annual or special meeting of stockholders by a two-thirds vote of the members attending the meeting, if a quorum be present.

JOINT EXHIBIT 5-E

SPPDB

War Department, Office of the Under Secretary,  
Washington, D. C., Price Adjustment Board

January 15, 1943.

Pacific Forest Industries,  
Tacoma, Washington.

Gentlemen:

On December 18, 1942, we wrote to your company a letter, a copy of which is hereto attached. No response has been received. With the thought that this failure may be the result of an oversight, we call it to your attention with the request that you let us hear from you promptly.

Yours very truly,

/s/ HARLEY C. STEVENS,

Major, A.U.S.,

Executive Officer.

Room 3D 614

Pentagon Building

( C o p y )

SPPDB

Budget Bureau No. 49-R019-42

Approval Expires 3-31-43

War Department, Office of the Under Secretary,  
Washington, D. C., Price Adjustment Board

December 18, 1942.

Pacific Forest Industries,  
Tacoma, Washington.

Gentlemen:

Pursuant to the provisions of Section 403 of Sixth Supplemental National Defense Appropriation Act of 1942, as amended, Price Adjustment Boards have been established by the War Department, the Navy Department, the Treasury Department, and the Maritime Commission. The function of these Boards is to conduct renegotiation proceedings with individuals or corporations who are parties to contracts with the said Departments and Commission, or are performing subcontracts thereunder. The objective of such proceedings is to lead to a clearance of the companies under the Section of the Act above mentioned.

It is the general policy of the Boards that the renegotiation proceedings be conducted by the Department or Service having the predominant interest in the business of the respective companies. In the case of companies having one or more subsidiaries, renegotiations are usually conducted on a consolidated basis by which the war contracts of both parent and subsidiary companies are considered at the same time. These policies are designed to minimize inconvenience to the contracting companies as well as to promote an efficient procedure by the Boards.

In order that your company and its affiliates, if any, may be assigned for renegotiation to the proper Department or Service with the minimum of inconvenience to all concerned, we will be glad to receive any information which you may care to submit



bearing upon the matter. Such information should cover the following subjects:

a. Your estimate of the total dollar amount of the direct (prime) contracts which your company has with (1) the War Department, (2) the Navy Department, (3) the Treasury Department, (4) the Maritime Commission. With respect to your contracts with the War Department, you should indicate how the same are divided between the several Services of Supply and the Army Air Forces.

b. Your estimate of the dollar amount of the subcontracts which you are performing. This information should also be subdivided between Departments and the Army Services as requested in paragraph (a) above. In the event that it is not readily possible to divide the subcontracts between the Departments and Services, a statement by you of the principal products furnished under such subcontracts will be helpful for the present purposes.

c. The dollar amount of the expansions of your industrial facilities (plant or equipment) which have been financed by Government agencies. These should include facilities fully or partially completed and indication should be given as to the Department of Service, if any, sponsoring same.

d. A statement as to whether your company is the parent or subsidiary of another company and the percentage of ownership. In case your company has such affiliates, the information outlined in this letter should be submitted by or for each of them. This is proposed so that, if deemed desirable, the companies may be assigned for renegotiation simul-



taneously to the same Department or Service, and that renegotiation proceedings may be conducted on a consolidated basis.

We enclose for your convenience a suggested outline of reply. It is requested that such reply be forwarded to us in triplicate and that a separate reply be made by or for each affiliated company.

The difficulty of giving promptly an exact statement of the matters above mentioned is recognized. Accordingly, it is to be understood that a general estimate with respect to the amounts of contracts and subcontracts will suffice for the immediate purpose. Such information will in any case be received without prejudice to you.

The assignment of your company will be deferred for fifteen days following the date of this letter in order that you may have an opportunity to submit the information outlined above.

Yours very truly,

HARLEY C. STEVENS,

Major, A.U.S.,

Executive Secretary.

To: Assignment Section

Price Adjustment Board

War Department

Room 3D614 Pentagon Building

Arlington, Va.

Date .....

Gentlemen:

In reply to your inquiry .....,  
we would advise as follows:

We estimate that the supply contracts (including subcontracts) of this company total \$..... and are divided as indicated below. We also indicate the amount of "facility expansions" financed by the Government and the agency which sponsored them:

	Supply Contracts		Publicly Financed
	Prime	Subcontracts*	Facility Expansions
Navy Department	.....	.....	.....
Maritime Commission	.....	.....	.....
War Department:			
Materiel Command, Army Air			
Forces, Services of Supply	.....	.....	.....
Chemical Warfare Service	.....	.....	.....
Corps of Engineers:			
Construction Division,			
Supply Division	.....	.....	.....
Ordnance Department	.....	.....	.....
Quartermaster Corps	.....	.....	.....
Signal Corps	.....	.....	.....
Surgeon General	.....	.....	.....
Transportation	.....	.....	.....
Treasury Department	.....	.....	.....
Unclassified	.....	.....	.....

(\* If impossible to divide subcontracting business between Department and Services, state value and nature of product.)

The corporate relationships of this company are as follows:

(Give parent company, if any, and subsidiaries, if any, together with the approximate amount of intercompany ownership and any comments desired to be made as to practicability of renegotiation on a consolidated basis.)

Our current fiscal year ends.....

The foregoing information is based on general estimates only. Its purpose is to indicate to you our view as to how this company and its affiliates should be assigned for renegotiation under Section 403 of Public Law No. 528, as amended, should such renegotiation be required.

.....,

Name of Company.

(N.B. This reply should be in triplicate. Replies on behalf of affiliated companies should be made simultaneously.)

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### JOINT EXHIBIT 6-F

Pacific Forest Industries  
Exporters of Plywood

Tacoma, Wash., U. S. A.

April 24, 1943.

Dear Sirs:

We are pleased to enclose Credit Memorandum to cover price adjustment on orders supplied by you and shipped by us during the period April 1st,

1942, through March 31st, 1943. The amount represents slightly more than the 6% commission deducted by us when settling your invoices. This means that P.F.I. business during the past fiscal year was handled at no expense to you and we hope to be able to continue on this basis.

May we point out, however, that the Treasury Department has filed with us a request for renegotiation of the contracts which we have accepted and are filling. It is, therefore, impossible to distribute the additional price evidenced by the enclosed Credit Memorandum until the results of the renegotiation are known. We believe, however, that the results will be favorable since, in the first place, we are a non-profit organization and, secondly, all plywood which we have shipped has gone outside the Continental United States and thus the contracts should not be subject to renegotiation under the law.

Yours very truly,

PACIFIC FOREST  
INDUSTRIES.

HCR:dmh

enc.

The above letter sent to the following:

Wheeler Osgood Sales Corp.

West Coast Plywood Co.

Washington Veneer Co.

Vancouver Plywood & Veneer Co.

United States Plywood Corp.

Smith Wood Products, Inc.

Simpson Industries, Inc.

Robinson Manufacturing Co.

Oregon-Washington Plywood Co.

M & M Wood Working Co.

Donald W. Lyle

Harbor Plywood Corp.

Evans Products Co.

Elliott Bay Mill Co.

Buffelen Lbr. & Mfg. Co.

Bellingham Plywood Corp.

Associated Plywood Mills

Anacortes Veneer, Inc.

Aberdeen Plywood Corp.

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JOINT EXHIBIT 7-G

(Copy)

Treasury Department  
Procurement Division  
Washington

Office of the Director

June 4, 1943.

Pacific Forest Industries  
Tacoma, Washington



Gentlemen :

Reference is made to your letter of April 24, 1943, in which you state that Pacific Forest Industries is exempt from income tax payments through the Board of Tax Appeals in Docket No. 99742 dated November 4, 1941.

After a review of the Docket mentioned Procurement Division's Legal Staff has advised that the opinion rendered by the Board of Tax Appeals in this case only indicates a certain sum of money received by the contractor from its producer mills for the purpose of reducing an operating deficit incurred in its prior fiscal year was excludable from gross income for that taxable year. Hence, it appears that the Docket opinion is no basis to exempt your company. Consequently, I am directed to require that your accounts be renegotiated.

There have been received your balance sheets for the fiscal years ending March 31, 1936, through 1942. The information furnished, however, is not in sufficient detail to enable the Board to develop the necessary factual data required.

Since my letter of April 3 the enclosed mimeographed sheet has been issued showing the detail required. It will, therefore, be appreciated if you will furnish this information in the detail set out at your earliest opportunity.

As the balance sheets have not been certified to by a public accountant, they are returned for the purpose of having each of the statements sworn to by your treasurer or other accountable officer of

your firm. When these sheets are returned they should be accompanied by an analysis of the following:

Agents' commissions

Financing allowance

Exporters' commission

Traveling expenses

Trade Extension in Latin America

Cartons

It is hoped that by this effort to get all necessary data by mail, to be able to cut meetings with your firm and the Board to a minimum.

Very truly yours,

/s/ H. C. MAULL, JR.,

Chairman, Treasury Department Price Adjustment Board.

Enclosures

(Copy)

Information to Be Furnished for Fiscal Years  
1941 and 1942 to Extent Applicable

1. History of Business

(a) Brief corporate history

(b) Normal peacetime products

(c) Conversion to wartime

(d) Conversion completed

(e) Conversion contemplated

- (f) Location and brief description of plants
  - (1) Which devoted to war work
  - (2) Percentage of total production
- (g) Nature of Operation and degree of intergation
- (h) Extent to which
  - (1) Prime contractor
  - (2) Subcontractor
- (i) List of subcontractors with \$100,000 or more of business on an annual basis
- (j) List of principal suppliers with dollar amount of purchases

## 2. Ownership and Affiliations

- (a) History
- (b) Principal stockholders
- (c) Intercorporate relations
- (d) List of subsidiaries or affiliates giving:
  - (1) Percentage of ownership
  - (2) Nature of business
  - (3) Whether or not consolidated tax return

## 3. Price and Production Record

- (a) Voluntary price reductions identified by contracts and expressed as to units and total dollar amount in 1942 and projected into 1943

- (b) Competitive price position
- (c) General statement as to performance under contracts as a whole
- (d) Special work in product development, assistance to Government, other contractors and availability of patents to others
- (e) Special risks inherent in the business beyond the company's control

#### 4. Financial Assistance by Government

- (a) Through what source—War Department, Defense Plant, Reconstruction Finance Corporation, etc.
- (b) Nature of assistance
  - (1) If for physical facilities, brief description of nature, when commenced and when in operation, percentage of total volume handled

#### 5. Plant Facilities Financed by Company

- (a) Source of funds
- (b) Cost and brief description
- (c) Percentage of War production to total production
- (d) Extent to which covered by Certificates of Necessity

#### 6. Break-down of Business as between Renegotiable and Non-Renegotiable

- (a) Basis of break-down
- (b) Orders or contracts completed and paid in full prior to April 28, 1942
- (c) Full development of and reasons for allocation of manufacturing expense, factory burden, depreciation, amortization of emergency plant facilities, advertising, selling and general administrative expense, between the two classes of business. See Instruction Sheet for Filing Financial Data and "Joint Statement Etc."

#### 7. Cost Plus Fixed Fee Business

- (a) Not to be included in sales figures but to be indicated separately

#### 8. Subcontract Costs

- (a) Amount included in cost of government sales for finished or partly finished products purchased from others.
- (b) Other substantial material costs

#### 9. Compensation

- (a) Current salaries (including bonuses separately) to each of the principal executives (\$10,000 or more per year) compared with years 1939 through 1941.
- (b) Bonus plans



- (c) Stock purchase or option plans
- (d) Insurance plans
- (e) Employee compensation
- 10. Extraordinary Reserves
  - (a) Reason therefor, amount and nature of risk
- 11. Breakdowns—(In the event the following items are shown in summary form in the auditor's report)
  - Detailed breakdown of—
    - (a) Cost of goods sold
    - (b) Selling Expenses
    - (c) Administrative and General Expenses  
(42969)

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JOINT EXHIBIT 8-H  
Treasury Department  
Procurement Division

Washington 25

Office of the Director

June 15, 1943.

Pacific Forest Industries  
Tacoma, Washington

Gentlemen:

Reference is made to letter from this office dated June 4, 1943, requesting certain data regarding the renegotiation of your Government contracts.

To date no reply has been received, and it will be appreciated if you will assemble the information and have it reach me at an early date.

Very truly yours,

/s/ H. C. MAULL, JR.,

Chairman, Treasury Department Price Adjustment  
Board.

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JOINT EXHIBIT 9-I

McMicken, Rupp & Schweppe  
Attorneys and Counselors at Law  
657-671 Colman Building  
Seattle, Washington  
(Zone 4)

Maurice McMicken—1940

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Otto B. Rupp  
Alfred J. Schweppe  
Maurice R. McMicken  
Bernard Reiter  
J. Gordon Gose  
John N. Rupp

March 30, 1944

Mr. Henry Relf  
Pacific Forest Industries  
Washington Building  
Tacoma, Washington

Re: P.F.I. Renegotiation

Dear Henry

Enclosed herewith is a memorandum from our Mr. Stoneman, covering the above subject. We shall continue to follow the matter closely.

As respects the fiscal year April 1, 1942, to March 31, 1943, it may be that the P.F.I. is in the clear after March 31st of this year. Whether it is or not depends on the application to the P.F.I. situation of the last paragraph of Section (c) (6), which provides that no renegotiation shall be commenced by the Secretary "more than one year after the close of the fiscal year of the contractor or subcontractor within which completion or termination of the contract or subcontract, as determined by the Secretary, occurs."

As to the fiscal year April 1, 1943, to March 31, 1944, filing of financial statements setting forth "such information as the board may by regulations prescribe" is now mandatory. For this, of course, we will have to await the regulations.

Yours very truly,

/s/ ALFRED J. SCHWEPPE.

(H. K.)

AJS:HK

March 28, 1944

## Memorandum

To: Mr. Schweppe

From: Mr. Stoneman

Re: P. F. I. Renegotiation

From the accountant's weekly News Letter dated March 13, 1944, published by Prentice-Hall, Inc., it appears that the new War Contracts Price Adjustment Board, created by the recently amended Renegotiation Act, has held its first meeting, organized, and commenced the drafting of regulations to govern its procedure.

While material on the recent developments has not yet appeared in our services, the following paragraph is contained in the above-mentioned News Letter:

"The authority of the Board will be exercised over renegotiation proceedings covering contractor's fiscal years ending after June 30, 1943, while the Joint Price Adjustment Board which was established last October by voluntary action of the various individual departmental boards will supervise renegotiation proceedings covering fiscal years ended prior to and on June 30, 1943."

(The order establishing the Joint Board is dated September 24, 1943, found at Par. 14, 371 C.C.H.; it is the O.W.I. release which was issued in October.)

Assuming, in advance of receipt of official word, that the above information is correct, we should look to the rules of the old Joint Price Adjustment

Board in determining our renegotiation procedure, if any, as to Pacific Forest Industries' fiscal year April 1, 1942-March 31, 1943, and to the rules of the new Board as to the fiscal year April 1, 1943-March 31, 1944. As to the latter year we have until the "first day of the fourth month following the close of the fiscal year" to file financial statements setting forth "such information as the Board may by regulations prescribe."

(Sec. (C) (5) (A))

I have written both to the new and the old Boards for copies of their regulations, which do not appear in the services, as a final determination cannot safely be made until they are examined. Preliminarily, I am approaching the problem for the prior year in the light of section (c) (6), of the Act, as it stood prior to the recent amendment, and for the latter year, in the light of the section as it now stands.

Before the recent amendment, the last paragraph of section (c) (6) read:

"No renegotiation of the contract price, pursuant to any provision therefor, or otherwise, shall be commenced by the Secretary more than one year after the close of the fiscal year of the contractor or subcontractor within which completion or termination of the contract or subcontract, as determined by the Secretary, occurs."

Paragraph (5) of the same section made it optional with the contractor to file financial and other statements.



As it now stands, section (c)(6) reads:

“This subsection shall be applicable to all contracts and subcontracts, to the extent of amounts received or accrued thereunder in any fiscal year ending after June 30, 1943, whether such contracts or subcontracts were made on, prior to, or after the date of the enactment of the Revenue Act of 1943; and whether or not such contract or subcontracts contain the provisions required under subsection (b), unless (A) the contract or subcontract provides otherwise pursuant to subsection (i), or is exempted under subsection (i), or (B) the aggregate of the amounts received or accrued in such fiscal year by the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Department and subcontracts including those described in clause (a), but excluding subcontracts described in subsection (a)(5)(B) do not exceed \$500,000 and under subcontracts described in subsection (a)(5)(B) do not exceed \$25,000 for such fiscal year. If such fiscal year is a fractional part of twelve months, the \$500,000 amount and the \$25,000 amount shall be reduced to the same fractional part thereof for the purpose of this paragraph.”

Reports are now mandatory, by the provisions of section (5)(A) from “every contractor and subcontractor who holds contracts or subcontracts to which

the provisions of this subsection are applicable," etc.

It may be that the fiscal year April 1, 1942-March 31, 1943, will not be renegotiable after March 31st, as that will be a year after the close of the fiscal year, and if this proves to be true no report will be necessary. However, it is not safe to come to any final conclusions until the situation is thoroughly reviewed in the light of the regulations which the Board has the power to make.

As respects the fiscal year April 1, 1943-March 31, 1944, a report to the Board will undoubtedly be required, as the aggregate of the amounts received or accrued during the year exceed \$500,000. Present information is that the report is to be submitted on the Board's own forms, request for which has been made.

From the time the report is filed, or the end of the fiscal year, whichever is the later, the Board has a year within which to commence renegotiation proceedings. If no such proceedings are commenced within that time, the contractor is discharged from all liability for excessive profits.

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#### JOINT EXHIBIT 10-J

Pacific Forest Industries

Exporters of Plywood

Tacoma 2, Wash., U.S.A.

To the Stockholders of the P.F.I.:

The enclosed Balance Sheet and Statement of Operations cover the Pacific Forest Industries activ-

ities during the fiscal year ending March 31, 1944.

The operation of the P.F.I. shows receipts and expenditures to be in balance. Prior to the close of the fiscal year, the sum of \$303,630.45 was applied to the account of Adjustment of Mill Invoices in accordance with the by-laws. This figure represents a return of approximately 4% on the net mill invoices.

The settlement of outstanding Credit Memoranda is held up pending the P.F.I. renegotiation. A statement is being filed this month with the Price Adjustment Board of the Treasury Department which it is hoped will result in clearance.

An audit of the P.F.I. books is now in progress and a report will be submitted as soon as the audit is completed.

N. O. CRUVER,  
Secretary-Treasurer.

May 4, 1944.

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JOINT EXHIBIT 11-K  
Treasury Department  
Procurement Division  
Washington 25

Office of the Director

June 21, 1944

Pacific Forest Industries  
1219 Washington Building  
Tacoma, 2, Washington

Gentlemen:

Upon review of the information submitted by you in connection with renegotiation under the Renegotiation Act, as amended, this office recommended to the War Contracts Price Adjustment Board that your assignment to this office for renegotiation be canceled for your fiscal year ending March 31, 1943.

This office is advised that such assignment has been canceled in accordance with its recommendation.

While such cancellation does not operate as a release of liability under the Renegotiation Statute, nevertheless, in the absence of further developments no further action is contemplated.

Very truly yours,

H. C. MAULL, JR.,

Chairman, Treasury Department Price Adjustment  
Board.

Certified to be a true copy, 3/17/48.

McMICKEN, RUPP &  
SCHWEPPE,

By /s/ WARREN A. DOOLITTLE.



JOINT EXHIBIT 12-L

Pacific Forest Industries

Exporters of Plywood

Tacoma, Wash., U. S. A.

June 26th, 1944

Mr. Alfred J. Schweppe

McMicken, Rupp & Schweppe

Colman Building

Seattle, 4, Washington

Dear Al:

Confirming telephone conversation, I am enclosing original of the letter received from Mr. H. C. Maull, Jr., and have taken a copy for our records. I thought perhaps the original might be interesting to you to show it is definitely a form letter. The information which we sent to Mr. Maull covered our fiscal year ending March 31st, 1944, and I am wondering if we should call this point to his attention or just await developments.

I should appreciate having your ideas on the subject at your convenience and with kindest regards, I am,

Sincerely yours,

HENRY,

H. C. RELF,

Manager.

HCR:dmh

Enc.

Certified to be a true copy, 3/17/48.

McMICKEN, RUPP &

SCHWEPPE,

By /s/ WARREN A. DOOLITTLE.

## JOINT EXHIBIT 13-M

June 27, 1944

Mr. Henry Relf  
Pacific Forest Industries  
Washington Building  
Tacoma, Washington

Re: Renegotiation

Dear Henry:

With reference to your letter of the 26th, enclosing the Treasury Department's form letter of June 21, 1944, since the Department has taken definite action "upon review of the information submitted by you," and "the information submitted by you" covered the fiscal year ending March 31, 1944, I do not believe their evident error in inserting "1943" in their form letter is of sufficient moment to require further correspondence. Your fiscal year ending as it does on March 31st, your report contained only three months of 1944, but nine months of 1943, and it is understandable how the reviewer of the file could easily make the error of inserting the wrong year. I believe you can safely close your file on the matter.

Sincerely yours,

ALFRED J. SCHWEPPE.

AJS:FB

Certified to be a true copy, 3/17/48.

McMICKEN, RUPP &  
SCHWEPPE,

By /s/ WARREN A. DOOLITTLE.

JOINT EXHIBIT 14-N

June 27, 1944

Mr. Henry Relf  
Pacific Forest Industries  
Washington Building  
Tacoma, Washington

Re: Renegotiation

Dear Henry

With further reference to the above subject, the Department's letter of June 21, 1944, as it says, is not a release, and your liability will not terminate until the statute of limitations has run, which in our opinion, if nothing further happens, will be a year from the date of the filing of your statement.

In my judgment, because the clearance from the Department is not absolute, the money should be withheld from distribution, at least unless released by the Executive Committee after a full review of the facts.

Sincerely yours,

ALFRED J. SCHWEPPE.

AJS:FB

Certified to be a true copy, 3/17/48.

McMICKEN, RUPP &  
SCHWEPPE,

By /s/ WARREN A. DOOLITTLE.

## JOINT EXHIBIT 15-O

Pacific Forest Industries

Exporters of Plywood

Tacoma 2, Wash., U.S.A.

May 4th, 1949

Messrs. McMicken, Rupp &amp; Schweppe

Colman Building

Seattle, 4, Washington

Dear Sirs:

This is to inform you that as of May 4th, 1944, the date of the Secretary-Treasurer's report to the stockholders of the Pacific Forest Industries, Credit Memoranda covering the refund due the members of Pacific Forest Industries for the fiscal year ending March 31st, 1944, had been issued and mailed to the members.

Yours very truly,

PACIFIC FOREST  
INDUSTRIES,

/s/ H. C. RELF,

Managing Director.

HCR:dmh

Filed T. C. U. S. June 14, 1949.

Before the Tax Court of the United States  
Docket No. 20729

In the Matter of:

HARBOR PLYWOOD CORPORATION,  
Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

June 14, 1949, 10:00 A.M.

(met pursuant to notice.)

Before: Honorable C. P. LeMire,  
Judge.

Appearances:

WARREN A. DOOLITTLE, ESQ.,  
Appearing for the Petitioner.

WILLIAM E. KOKEN, ESQ.,  
Appearing for the Respondent.

### PROCEEDINGS

The Court: The Clerk will call the docket.

The Clerk: The Harbor Plywood Corporation,  
Docket 20729.

The Court: Will the parties state their appearances for the record?

Mr. Doolittle: For the petitioner, the Harbor Plywood Corporation, Warren Doolittle.

Mr. Koken: William E. Koken for the respond-



ent.

The Court: Proceed with your opening statement.

Opening Statement on Behalf of the Petitioner  
By Mr. Doolittle:

May it please the Court, as will be seen from the pleadings which are on file herein, this case presents a very simple question as to the time for the proper reporting of income by the petitioner Harbor Plywood Corporation. The income which is in question, if the Court please, consists of three separate refunds which were received by the petitioner Harbor Plywood Corporation from the Pacific Forest Industries, the corporation organized under the laws of the State of Washington, which is engaged solely in the export of plywood and other forest products, and in which the petitioner Harbor Plywood Corporation was, and still is for that matter, a stockholder; all that this court is called upon to determine is whether the amount of each credit memorandum constitutes a part of the taxable income of the petitioner Harbor Plywood Corporation, first, for the year in which each credit memorandum was issued by Pacific Forest Industries, as contended by the respondent Commissioner of Internal Revenue, which contention the taxpayer disagrees with, or, secondly, whether each credit memorandum constituted income for the year during which the Statute of Limitations expired on the re-negotiability of Pacific Forest Industries, or the third alternative, whether it constituted income to the petitioner Harbor Plywood Corporation for the

year in which each credit memorandum was paid in cash to the petitioner Harbor Plywood Corporation by Pacific Forest Industries.

Now, as the Court will see from the pleadings which are on file herein—and I suppose at this juncture I should invite the Court's attention to the fact that the original petition, pursuant to a motion and order granted by the court has been amended to set forth the petitioner's alternative contention, namely, that these credits did not constitute income to the petitioner prior to the expiration of the Statute of Limitations.

As the Court will see, the petitioner's main contention is that these amounts are not includible in income until such time as they were paid, or, in the alternative, until the period of limitations had expired on the re-negotiability of Pacific Forest Industries, whereas the Commissioner contends they were includible at the moment the memoranda were issued.

We will introduce a stipulation of fact which has been agreed upon with opposing counsel. We will object to the relevancy of Paragraph IX of that stipulation of fact, but we will introduce some additional testimony in support of the reasonableness of the threat of re-negotiations which hung over the head of the Pacific Forest Industries, and, in turn, hung over the head of the taxpayer Harbor Plywood Corporation.

The facts, as will be disclosed by the stipulation and the testimony are quite simple and not difficult to state. The Harbor Plywood Corporation

was in the business of manufacturing doors and plywood and other forest products, and had its place of business at Hoquiam. Its books were on the accrual basis, and the income was reported on the calendar year basis. The Harbor Plywood Corporation makes no sales in the export trade of its plywood. Their forest products, insofar as exports are concerned, are marketed by the Pacific Forest Industries. The Pacific Forest Industries is a co-operative organization organized under the laws of the State of Washington. As stipulated in the stipulation of facts, it is organized solely for the purpose of engaging in exporting plywood, as authorized by the Webb-Pomerene Export Trade Act. The Pacific Forest Industries, as will be seen from the stipulation, is a corporation under the laws of the State of Washington, and it is a stock corporation. The books of the Pacific Forest Industries are kept on the accrual basis, and its operations are reported on a fiscal year basis ending March 31 of each year.

The petitioner Harbor Plywood Corporation, at all times material to this action, as I stated previously, was a stockholder in the Pacific Forest Industries and was one of many stockholders.

This court is concerned with three credit memoranda which were issued to the petitioner and by the Pacific Forest Industries, which represented the petitioner's proportionate share of the refund of the excessive commissions charged the members of the Pacific Forest Industries during the Pacific Forest Industries' fiscal years ended March 31,



1943, March 31, 1944, and March 31, 1945. The date of each credit memorandum and the date of payment in cash by the Pacific Forest Industries is not in dispute, and, as set forth in the stipulation, the 1943 memorandum was paid in December, 1944; the 1944 memo was paid in cash in January of 1946, and the 1945 credit memo was paid in cash in July of 1946.

I would like at this time to inquire as to the Court's wishes. I don't wish to embark upon an argument, and I take it we will be allowed a brief time for argument.

The Court: There will be no oral argument.

Mr. Doolittle: All on briefs?

The Court: That is all taken care of in your brief.

Mr. Doolittle: I see. We will attempt to show, if the Court please, that Pacific Forest Industries, despite its repeated efforts to the contrary, was directed by the Treasury Department to file reports under the Re-negotiation Act, and it was informed and reinformed that it was subject to re-negotiation. The correspondence which is attached to the stipulation of facts, which will be filed, will show that the threatened re-negotiation of Pacific Forest Industries was actually a strong, continued and persistent threat, and, I take it, there will be no substantial controversy on that score.

We will also show by oral testimony that there were many conferences held by the Pacific Forest Industries with the Treasury Department Price Adjustment Board to free the Pacific Forest In-

dustries from the threat of re-negotiation. We will also show that the directors and the executive committee of the Pacific Forest Industries had no choice because of the threat of re-negotiation to delay the payment of the credit memoranda until the period of the re-negotiability of the P. F. I. had expired and, consequently, until the accounts receivable with the Government, with which the P. F. I. did business exclusively, until they were collected by the P. F. I., so that they might, in turn, pay to the taxpayer.

We will further show that the Petitioner Harbor Plywood Corporation had knowledge of this threatened re-negotiation of the P. F. I., and that it acquiesced in P. F. I.'s decision to delay the payments of these credit memoranda until the period of limitation on re-negotiation of the P. F. I. had expired, and that, in turn, the taxpayer had every reason to delay the reporting of these amounts until such period had expired. That, if the Court please, is a simple statement of the case. It is a question of the proper reporting of income by the Harbor Plywood Corporation, which income was first credited to it by the P. F. I. and was later paid.

#### OPENING STATEMENT ON BEHALF OF THE RESPONDENT

By Mr. Koken:

If the Court please, I will run over the facts rather hurriedly. The years involved are 1943, 1944 and 1945. The taxes involved are the excess profits taxes for the first two years, and the income



taxes for the last year. As stated by petitioner, counsel for the Harbor Plywood Corporation, the Harbor Plywood Corporation is an accrual basis taxpayer operating on the calendar year basis. It is a member of the Pacific Forest Industries, which is a cooperative association engaged in the exporting of plywood. It is customary among cooperative associations to return what are called excessive commissions to their members at the close of the fiscal year. The Pacific Forest Industries' fiscal year ends March 31. As of March 31, 1943, the Pacific Forest Industries issued a credit memorandum to the Harbor Plywood Corporation for some \$15,000.00 for its fiscal year ending March 31, 1944, it issued a similar credit memorandum in the sum of approximately \$33,000.00; and for the fiscal year ending March 31, 1945, it issued a similar credit memorandum, in the amount of approximately \$15,000.00.

The respondent determined that those credit memoranda constitute income of the petitioner Harbor Plywood Corporation for the year during which they were issued, and asserted deficiencies which are set forth in the notice of deficiency. The petitioner contended initially that these memoranda were not includible in income until they were actually paid in cash. The first one was paid in December, 1944, and was accordingly reported as income in that year by the petitioner. The last two were paid during 1946, and were reported in that year as income. I gather that the petitioner has retracted from its position that they are report-

able when paid in cash, and is now asserting an alternative argument, namely, that they are not includible in the petitioner's income in any event at any time prior to the expiration of the re-negotiability of the Pacific Forest Industries. It is the respondent's contention that re-negotiability has absolutely no bearing on the accruability of the income of the Harbor Plywood Corporation, petitioner. However, in the light of the alternative contention now put forth by the petitioner, which is now incorporated in the pleadings, the respondent has adopted also as its alternative contention the position that, in any event the memorandum was included in the year during which the Statute ran on the re-negotiability of the P. F. I. You will find that the petitioner and the respondent have the same alternative contention. Should the Court hold that the alternative contention of either party would be proper, it would give rise to additional deficiencies and excess profits taxes in 1943 and 1944, and income taxes for 1945; and, as an additional measure, the respondent is prepared to answer on the amended petition asserting those increased deficiencies. The result of a decision of the Court that the memoranda are includible in the years during which the statute ran would be merely moving forward to the next succeeding year each credit memoranda, namely, the 1943 would be includible in 1944, the 1944 in 1945, and the 1945 in 1946.

I would like to offer the stipulation of facts.

Mr. Doolittle: If it may please the Court, subject to the right of the petitioner to object to the

relevancy of Paragraph IX of the stipulation of facts; and we wish at this time to make objection to the Court to the admissibility of Paragraph IX of the stipulation of facts on the ground that it is irrelevant. Such paragraph IX has to do with the manner of reporting these credit memoranda by Pacific Forest Industries on its books of account, and the petitioner taxpayer, Harbor Plywood Corporation, respectively submits that the manner of the P. F. I. accounting in the books of account is not in issue, and is not before the Court at this time, and is irrelevant and inadmissible.

Mr. Koken: May it please the Court, I believe that is a very strange objection for the reason that the petitioner's entire argument is based upon the re-negotiability of the other organization, the Pacific Forest Industries, whose records reflect the manner in which they, that is, the Pacific Forest Industries, treated these very credit memoranda. Their very case is based upon the re-negotiability of that organization. It seems strange they should object to one phase of the record of that organization and endeavor to base their case on other activities of the organization. It is most relevant.

The Court: The objection will be overruled at this time. The Court can always disregard the paragraph in any event if it finds that it is not relevant.

Mr. Koken: There are fifteen joint exhibits in the stipulation.

The Court: They are all numbered?

Mr. Koken: Yes, they are.

The Court: And they will be considered in evidence as joint exhibits?

Mr. Doolittle: Yes.

The Court: Very well, they will be received in evidence as Joint Exhibits 1-A to 15-O.

(The documents above referred to were marked and received in evidence as Joint Exhibits No. 1-A to 15-O, inclusive.)

Mr. Koken: I would like to put in evidence as Joint Exhibit 16-P the minutes of the meeting of the executive committee of the Pacific Forest Industries held on April 20, 1943.

The Court: That will be a joint exhibit?

Mr. Doolittle: Yes.

The Court: That will be Joint Exhibit 16-P, and it will be received in evidence.

(The document above referred to was marked and received in evidence as Joint Exhibit No. 16-P.)

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### JOINT EXHIBIT 16-P

Pacific Forest Industries

Exporters of Plywood

Tacoma 2, Wash., U.S.A.

April 20th, 1943.

Executive Committee

Messrs. Frost Snyder

T. B. Malarkey

N. O. Cruver

Philip Garland

E. E. Westman

CC—Mr. Alfred J. Schweppe



## Minutes of Meeting

A meeting of the Executive Committee was held at the P.F.I. Offices on Tuesday, April 20th, 1943, at 9:15 a.m.

Present were: Frost Snyder, N. O. Cruver and Philip Garland.

Also present were: Alfred J. Schweppe and H. C. Relf.

Absent: T. B. Malarkey and E. E. Westman.

There was first discussed the P.F.I. financial position. A preliminary Balance Sheet and Statement of Operations for the fiscal year ending March 31st was submitted. The statements showed excess receipts over expenditures for the fiscal year ending March 31st, 1943, of \$161,998.58. The P.F.I. Management was instructed to distribute this excess in the usual manner provided by the by-laws in the shape of credit memoranda for each mill's proportion of the overage in accordance with the footage shipped to P.F.I. The management was also instructed to send a letter to the members pointing out the very favorable results of the past fiscal year's operation.

There next was discussed the question of a change in the commission to be deducted by the Pacific Forest Industries from mill invoices and it was moved by Mr. Cruver and seconded by Mr. Garland that effective April 1st, 1943, the commission be reduced to 2% until further notice. Motion was unanimously carried. The management was in-

structed to notify all mills of this change in commission percentage.

The next subject for discussion was a proposed brief submitted by Culbertson & LeRoy of Washington, D. C., and which was to be filed with the War Production Board, the Central Procurement Agency, the Treasury Procurement and the Bureau of Accounts and Supplies, Navy Department.

The purpose of this brief was to endeavor to counteract any move on the part of the Central Procurement Agency to take over the purchase of plywood for the Lend-Lease Division of the Treasury Department. The Committee was informed by the Management that on April 19th, the Lend-Lease Division of the Treasury Department. had secured a blanket release for approximately 60,000,000 feet of Hutment grade from the War Production Board in accordance with the terms and conditions of Limitation Order L-150-B. The Committee was also informed that there seemed to be no disposition on the part of the Treasury Department to change their methods of purchasing Lend-Lease plywood which was evidenced by their placing of the last contract totalling 155,000,000 feet with P.F.I.

It was moved by Mr. Garland and seconded by Mr. Cruver that Mr. Schweppe be instructed to write Messrs. Culbertson & LeRoy that it was deemed unnecessary and inadvisable to file a brief such as they proposed at this time. The motion was unanimously carried.

There next was brought up a request by the St. Louis Plywood Manufacturers, Inc., to use the P.F.I. standard fibreboard cartons in packaging plywood which they were supplying for export. It was proposed that the manufacturers would be willing to pay a royalty. After some discussion, the Management was requested to write Mr. Willis an exploratory letter to aid the Executive Committee to reach a decision with regard to the proposal.

There being no further business, the meeting adjourned at 10:00 a.m.

Approved:

N. O. CRUVER,  
Secretary-Treasurer.

Filed T. C. U. S. June 14, 1949.

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Mr. Koken: I would like to offer 17-Q, which is a record of the meeting of the Executive Committee of the Pacific Forest Industries held on June 29, 1943.

The Court: That will be joint Exhibit 17-Q, and will be received in evidence.

(The document above referred to was marked and received in evidence as Joint Exhibit No. 17-Q.)

## JOINT EXHIBIT 17-Q

Pacific Forest Industries

Exporters of Plywood

Tacoma 2, Wash., U. S. A.

June 29th, 1943

Executive Committee

Messrs. Frost Snyder

Thomas B. Malarkey

N. O. Cruver

Philip Garland

E. E. Westman

Arnold Koutonen

CC: Mr. A. J. Schweppe

## Minutes of Meeting

A meeting of the Executive Committee was held at the P.F.I. Offices on Tuesday, June 29th, 1943, at 9:10 a.m.

Present were: Frost Snyder, T. B. Malarkey, N. O. Cruver and Arnold Koutonen.

Also present were: B. V. Hancock, H. J. Nunneley, Alfred J. Schweppe and H. C. Relf.

Absent: Philip Garland and E. E. Westman.

The re-negotiation of P.F.I. contracts with Treasury Procurement was first discussed. Mr. Schweppe reported on his interview with H. C. Maull, Jr., Chairman, Treasury Department Price Adjustment Board at Washington, D. C., and also stated that the P.F.I. Management had prepared a complete statement with regard to its method of operations



as well as answering various specific questions raised by the Treasury Department. Mr. Schweppe stated that this statement was full and complete, had his approval and it was his opinion that after this statement was received by the Treasury Department, that any re-negotiation as far as P.F.I. was concerned, would be dropped.

The next item for discussion was the allocation of the W.P.B. Lend-Lease allotment. The P.F.I. management requested the committee to decide whether this business should be allocated as far as possible proportionately throughout the industry or should the present flexible method be followed whereby orders were placed to fit as closely as possible the manufacturing problems of each individual mill. The P.F.I. Management was instructed to continue placing this business on the flexible basis until such a time as the allotment was increased to a point where this method would not be practicable.

There next was discussed the request by Mr. Eric Lindblom of Weyerhaeuser Sales Co. to be given the P.F.I. export statistics for the years up to and including 1939. It was explained that Mr. Lindblom is working on a research project concerning the export trade in lumber and lumber products and that he could not secure from Government agencies full information with regard to plywood statistics. After some discussion, the P.F.I. management was instructed to give Mr. Lindblom the statistics he required.

A letter from the Steel Export Association of America, requesting a copy of the P.F.I. Articles of Incorporation and a copy of its by-laws was read to the Committee. It was moved by Mr. Cruver and seconded by Mr. Malarkey that these documents be furnished and that a copy of the Federal Trade Commission decision be also sent to the Steel Export Association of America for their comments.

The next item for discussion was the adjustment of the salaries of the P.F.I. personnel which the Board of Trustees at the Annual Meeting held on May 6th, 1943, turned over to the Executive Committee for action. Mr. Schweppe explained the situation with regard to Treasury Department approval required on any salary adjustments and after some discussion, it was moved by Mr. Malarkey and seconded by Mr. Koutonen that Mr. Cruver be appointed as a committee of one to make a recommendation to the Executive Committee with regard to these salary adjustments and, at the same time, to explore the possibility of securing the U. S. Treasury Department approval therefor. Mr. Cruver was also authorized to approve the payment of the bonus to P.F.I. executive personnel on a monthly basis instead of a quarterly basis if he deemed it advisable.

The P.F.I. Management informed the meeting that the W.P.B. allocation of 1 million Exterior type, 4 million Hutment type and 5 million Moisture Resistant type did not permit of an equitable

distribution of P.F.I. orders to the mills. It was reported that in a conversation with Mr. Walby concerning this division of types, it was found that it would be necessary for the Lend-Lease Section of Treasury Procurement to apply to the Requirements Committee for any changes. It was suggested by the Management that the following division of types would be preferable from all standpoints, i.e., 2,500,000 Exterior; 4,000,000 Hutment, 3,500,000 Moisture Resistant. It was moved by Mr. Malarkey and seconded by Mr. Cruver that the P.F.I. be instructed to start negotiations through the Lend-Lease Section of Treasury Procurement to have the allotment changed.

There being no further business, the meeting was adjourned at 10:05 a.m.

Approved:

N. O. CRUVER,  
Secretary-Treasurer.

Filed T. C. U. S. June 14, 1949.

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Mr. Koken: And as 18-R, the record of the minutes of the Executive Committee of the Pacific Forest Industries dated April 25, 1944.

The Court: 18-R is received in evidence.

(The document above referred to was marked and received in evidence as Joint Exhibit No. 18-R.)

## JOINT EXHIBIT 18-R

Pacific Forest Industries

Exporters of Plywood

Tacoma 2, Wash., U. S. A.

April 25, 1944

Executive Committee

Messrs. Frost Snyder

Thomas B. Malarkey

N. O. Cruver

Philip Garland

E. E. Westman

Arnold Koutonen

CC: Mr. A. J. Schweppe

## Minutes of Meeting

A meeting of the Executive Committee was held at the P.F.I. Offices on Tuesday, April 25th, 1944, at 9:20 a.m.

Present were: Messrs. Frost Snyder, N. O. Cruver, Philip Garland and Arnold Koutonen.

Also present were: Messrs. Nunneley, Schweppe and Relf.

Absent: Messrs. T. B. Malarkey and E. E. Westman.

A preliminary Balance Sheet and Statement of Operations for the fiscal year ending March 31st, 1944, were submitted. The Statement showed Excess Receipts over Expenditures of \$303,630.45. It was moved by Mr. Cruver and seconded by Mr. Koutonen that the action of the Treasurer, in accordance with the by-laws, in crediting such excess



to the accounts of the respective members as an addition to the purchase price of merchandise sold, before closing the books as of the end of the fiscal year, be approved. This motion was unanimously carried.

There was next discussed the status of the renegotiation of P.F.I. contracts with the Treasury Department. Mr. Schweppe reviewed the situation and stated that there had recently been submitted by Mr. H. C. Maull, Jr., Chairman, Treasury Department Price Adjustment Board, Washington, D. C., a request for statements covering the P.F.I. operations for the fiscal years ending March 31st, 1943, and March 31st, 1944. The management stated that these statements would be filed in the near future.

There next was discussed the continuing slowness of payment on the part of the Treasury Department, making it impossible to maintain payments to the mills within a reasonable period of time.

The management stated that there were two suggested ways of expediting payment to the mills, either by the use of bank credit or inserting a discount clause on the face of P.F.I. invoices. After some discussion, the management was instructed to continue exerting all possible pressure to expedite payment and that in the event substantial payments were not received within a period of two to three weeks, that this problem be again submitted to the Executive Committee for further action.

There being no further business, the meeting was adjourned at 9:55 a.m.

Approved:

N. O. CRUVER,  
Secretary-Treasurer.

Filed T. C. U. S. June 14, 1949.

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Mr. Koken: And 19-S, record of the minutes of the meeting of the Executive Committee of the Pacific Forest Industries dated November 30, 1944.

The Court: That will be received as Joint Exhibit 19-S.

(The document above referred to was marked and received in evidence as Joint Exhibit No. 19-S.)

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JOINT EXHIBIT 19-S  
Pacific Forest Industries  
Exporters of Plywood

Tacoma 2, Wash., U. S. A.  
November 30th, 1944

Executive Committee

Messrs. Frost Snyder

T. B. Malarkey

N. O. Cruver

Arnold Koutonen

R. E. Seeley

CC: Mr. A. J. Schweppe

## Minutes of Meeting

A meeting of the Executive Committee was held at the P.F.I. Offices at 9:30 a.m., Tuesday, November 28th, 1944.

Present were: Messrs. Frost Snyder, T. B. Malarkey, N. O. Cruver and R. E. Seeley.

Also present were: Messrs. Schweppe, Kirk and Relf.

Absent: Arnold Koutonen.

The first item for discussion was a proposed exclusive agency agreement for the Republic of China with the China Plywood Company of Kunming, China. The terms of this agreement as well as the reasons for such an arrangement were fully discussed and it was moved by Mr. Cruver and seconded by Mr. Seeley that the exclusive agency be granted on the terms proposed. This motion was unanimously carried.

There was next discussed an exclusive agency arrangement for French Morocco, Spanish Morocco and Tangier with Messrs. Joseph S. Toletdano & J. M. Pinto S. A. R. L. of Casablanca. After some discussion, it was moved by Mr. Malarkey and seconded by Mr. Cruver that an exclusive agency for these territories be given to this firm. This motion was unanimously carried.

The next item for discussion was the payment of the credit memoranda issued to the mills covering the distribution of the overage for the fiscal year ending March 31st, 1943. The question of the status of the re-negotiation of P.F.I. for the fiscal years ending March 31st, 1943, and March 31st,

1944, was fully discussed and it was pointed out by Mr. Schweppe that P.F.I. had received only a conditional clearance and that it had been his recommendation that the funds be held and not distributed until May, 1945, especially with reference to the overage for the fiscal year ending March 31st, 1944. The Management informed the Committee that no statement had been requested by the Treasury concerning the operations of P.F.I. for the fiscal year ending March 31st, 1943, and that it had not been filed. The Committee was further informed that there was some question as to the operation of the Statute of Limitations relative to the re-negotiation of the business for that year. After thoroughly weighing the pros and cons of the matter, the Committee decided that there was a reasonable chance that there would be no re-negotiation for the fiscal year ending March 31st, 1943, and it was moved by Mr. Malarkey and seconded by Mr. Seeley that the Management be instructed to settle the credit memoranda covering the overage for the fiscal year ending March 31st, 1943.

It was moved by Mr. Cruver and seconded by Mr. Seeley that the annual Christmas bonus of one month's salary be given to the eligible P.F.I. employees. This motion was unanimously carried.

There being no further business, the meeting was adjourned at 9:56 a.m.

Approved:

N. O. CRUVER,  
Secretary-Treasurer.

Filed T. C. U. S. June 14, 1949.



Mr. Koken: And Joint Exhibit 20-T, which is the corporation income excess profits tax return for the petitioner Harbor Plywood Corporation for 1943, and I should like to ask authority to substitute a photostatic copy.

The Court: Very well. Joint Exhibit 20-T is received in evidence, and permission is given to the respondent to withdraw the original and substitute a photostatic copy.

(The document above referred to was marked and received in evidence as Joint Exhibit No. 20-T.)

Mr. Koken: I would like to offer Joint Exhibit 21-U, which is the income and excess profits tax return of the petitioner involved for the year 1944, with the same request.

The Court: All right. Joint Exhibit 21-U is received, and permission is granted to withdraw the original and substitute a photostatic copy.

(The document above referred to was marked and received in evidence as Joint Exhibit No. 21-U.)

Mr. Koken: As 22-V, the corporation income, declared value and excess profits tax return for the petitioner Harbor Plywood Corporation for the year 1945, with the same request.

The Court: 22-V is received in evidence and permission is given to withdraw the original.

(The document above referred to was marked and received in evidence as Joint Exhibit No. 22-V.)

The Court: Are there any further exhibits to be offered at this time?

Mr. Doolittle: No further exhibits.

The Court: All right, proceed, and call your first witness.

Mr. Doolittle: Before calling our first witness, and having in mind our assurance to your Honor it would not take more than one hour, we think it best to invite your attention, if we may, to several exhibits attached to the stipulation of facts, by way of background to certain testimony which we intend to introduce.

The Court: Very well.

Mr. Doolittle: If I may, with Mr. Koken's and your permission. state these briefly, I believe it would make the balance of the testimony more understandable.

The Court: Very well, you may proceed.

Mr. Doolittle: First of all, we would like to invite your Honor's attention to 5-E, a letter dated January 15, 1943, from the Treasury Department Price Adjustment Board addressed to Pacific Forest Industries respecting re-negotiations proceedings, which letter briefly states, on December 18, 1942, "We wrote to your company a letter, a copy of which is hereto attached. No response has been received. It is possible that this may have been an oversight." And attached thereto is a letter of December 18, 1942, relative to re-negotiation of the Pacific Forest Industries, submitting certain data.

We also wish to invite your Honor's attention to Joint Exhibit 16-P and 17-Q, which are the min-

utes of the executive meeting of the Pacific Forest Industries, in which the subject of re-negotiation of the P. F. I. is discussed; and then we invite your Honor's more specific attention to Joint Exhibit 6-F, which is dated April 24, 1943. If it will please the Court, this is the letter of transmittal forwarding the first of the credit memoranda with which we are concerned. You will note that the second paragraph of that letter states as follows: "May we point out, however, that the Treasury Department has filed with us a request for re-negotiation of the contract which we have accepted and are filing. It is therefore impossible to distribute the additional portion evidenced by the enclosed memorandum until the results of re-negotiation are known. We believe, however, the result will be favorable, since, in the first place, we are a non-profit organization and, secondly, all plywood that we have shipped has gone outside of the continental United States, and this contract is not subject to re-negotiation."

I would like to invite your Honor's attention and the Government's counsel to Exhibit 7-G, which immediately follows, and particularly to the last sentence of paragraph II of that letter, which, as your Honor will see, is from the Chairman of the Treasury Department Adjustment Board, addressed to Pacific Forest Industries, and which makes reference in that first paragraph to P. F. I. previous correspondence requesting exemption from re-negotiation. It reads, "Consequently, I am directed to require that your accounts be re-negotiated."

I would like to also, if your Honor please, invite

your specific attention to Joint Exhibit 10-J. That exhibit is dated May 4, 1944, and has reference to the second credit memorandum with which this Court is concerned, namely, the one for the period ended March 31, 1944. As will be seen in Joint Exhibit 15-O, it is stated that the 1944 memo had been issued to the members shortly prior to this letter to the stockholders dated May 4, which is Exhibit 10-J.

You will note in the third paragraph of Exhibit 10-J, settlement of outstanding credit memorandum is held up pending P. F. I. re-negotiation. Statement is being filed which it is hoped will result in clearance.

I would like to also invite your Honor's attention to Joint Exhibit 3-C, one of the black photostats. That is the credit memorandum for the third year in question, 1945, and you will note that endorsed upon the face of that credit memorandum is the following endorsement: "This credit memorandum is subject to re-negotiation, and it is therefore not final."

I would like to invite your Honor's further attention to Joint Exhibit 19-S, the last exhibit ahead of the tax returns, and to the paragraph beginning at the bottom of the first page: This exhibit is dated November 30, 1944. I need not take your time at this time to read it in full, but there is to be found there further reference to a discussion by the executive committee concerning the payment in cash of the 1943 and the 1944 memoranda, and a discussion of the threatened re-negotiation of the P. F. I. and of the applicable statute of limitations on said



re-negotiation, the recognition of the threat of re-negotiation, and the resolution of the executive committee as set forth in the last portion of that paragraph appearing on page 2: After thoroughly weighing the pros and cons of the matter, the committee decided there was a reasonable chance there would be no re-negotiation for the fiscal year ending March 31, 1943, and it goes on to say that it was moved and seconded that the committee be instructed to make the payment for the fiscal year ended March 31, 1943. Your Honor will also see from the stipulation of facts that it was a few days after November 30, 1944, pursuant to that resolution, the credit memoranda were paid in cash.

If the Court please, subject to your Honor's permission, I have Mr. Koken's approval, I believe, to call Mr. Alfred J. Schweppe as a witness. Mr. Schweppe has been the original counsel for the petitioner in this action, and he was and now is counsel for Pacific Forest Industries and for Harbor Plywood Corporation. He can testify of his own knowledge concerning the personal interviews with the Treasury Department Price Adjustment Board and his efforts to exempt the P. F. I. from re-negotiation, and he can testify of his own knowledge concerning the knowledge that the Harbor Plywood Corporation had, by virtue of his being their counsel and having informed them of the threats of re-negotiation. Mr. Koken has assured me in advance he has no objection, subject to your Honor's approval.

Mr. Koken: I think I should like to tell 'the

Court that while I have no objection to the competency of Mr. Schweppe, I am not in a very good position to object to the relevancy of the testimony that he will give, because of the alternative contention which we have made. Were it not for that alternative contention we would very definitely object to the testimony and all the exhibits included in paragraph XII of the stipulation.

The Court: Very well.

whereupon,

ALFRED J. SCHWEPPE

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Doolittle:

Q. Will you give your full name to the reporter?

A. Alfred J. Schweppe.

Q. Will you state your occupation?

A. I am an attorney-at-law, practicing in Seattle.

Q. Inviting your attention to the years 1943, 1944 and 1945, will you state your relationship to the petitioner Harbor Plywood Corporation at that time?

A. I was at that time and still am counsel for the Harbor Plywood Corporation.

Q. Directing your attention to those same years, what was your relationship, if any, to the Pacific Forest Industries?

(Testimony of Alfred J. Schweppe.)

A. I was also counsel for the Pacific Forest Industries.

Q. And still are?           A. And still am.

Q. Will you please tell the court, what, if any, efforts you made as counsel for the Pacific Forest Industries during the years 1943, 1944 and 1945 to exempt Pacific Forest Industries from re-negotiation under the Re-negotiation Act?

A. As the evidence in the stipulation already to some extent shows, I made strenuous efforts to have the P. F. I. exempted from re-negotiation, believing that it was the type of institution that ought to be exempt under the re-negotiation statute. Those efforts consisted of a number of interviews in Washington, D. C. where I went on an average of every month or two during the war years. I called upon Mr. Mall, who was the head of the Treasury Department Procurement, and also Chief of the Re-negotiation Office for Treasury Procurement, and the Chief Counsel for Treasury Procurement. As shown by one of the exhibits, it turned out to be of no avail for the reason that the Treasury Department took the position that the only contracting parties that they knew was the P. F. I., and therefore they held the P. F. I. was re-negotiable, and they finally confirmed that in one of the exhibits in the stipulation.

The Pacific Forest Industries is a Washington corporation, organized to do business solely in export trade under the terms of the Webb-Pomerene Act, which has authorized American manufacturers,

(Testimony of Alfred J. Schweppe.)

for the purpose of doing business in export trade, subject to certain provisions in the statute, an exception under the Sherman Anti-Trust Act. The Pacific Forest Industries is such a Washington corporation, and it has as its members and stockholders some twenty or twenty-five plywood companies. I think the list is attached to the letter of April 24, 1943, which is one of the exhibits, which was addressed to all the then members of the P. F. I., transmitting a credit memorandum with a notation concerning re-negotiation.

Under the by-laws which are in evidence, the P. F. I. operates as a non-profit corporation, and at the end of the year all of its income in excess of operating expenses is credited to the members in accordance with the proportionate share of business they have done that year with the P.F.I.

The Re-negotiation Act was passed in 1942 and, of course, was a new legal concept on the horizon with which neither businessmen nor government officials were very familiar, because it gave the Government the right to negotiate contracts for war purposes in the event it was believed by the Government that the profit on the so-called re-negotiable portion of the Government's business was excessive.

The Pacific Forest Industries did business during the years in question exclusively with the Treasury Procurement, which, as we all know, and which one could take judicial notice of, made all the purchases that were publicly known as lend-lease pur-



(Testimony of Alfred J. Schweppe.)

chases. The plywood was purchased for lend-lease in Britain. The contracts throughout the period in question were between the P.F.I. and Treasury Procurement. They were negotiated, formal contracts relating to plywood for export to foreign countries, and the only contracting parties in those parties were the P.F.I. and the Treasury Department.

As shown in the evidence, the P.F.I. is a cooperative organization and returns to its members the excess over operating expenses each year.

Of course, when Congress enacted the Re-negotiation Act, it created a new condition, or attached a new condition to the doing of business by the passage of the Re-negotiation Act, and, as a result, the income of the business resulting from such contracts which were subject to re-negotiation could be held up, or some portion of it, because it was subject to re-negotiation. In consequence of that, lawyers advised their clients that that income was subject to re-negotiation, and could not be considered income unconditionally belonging to the corporation, and that they should guide themselves accordingly until the question of re-negotiation had been taken care of.

I made repeated attempts through my office, and in visits to Washington, to have the P.F.I. exempted, as I stated a few moments ago, but failed to do so.

Q. Mr. Schweppe, did anybody accompany you?

A. On one of the conferences there was Mr.

(Testimony of Alfred J. Schweppe.)

*Relf*, who was the manager of the P.F.I. At any rate, the final answer is in the file, and the final answer was that the P.F.I. was re-negotiable. I advised them therefore that this memorandum, which came along about March 31, 1943, the first one, should not be paid until the question of re-negotiability was taken care of.

Q. Did you inform the Harbor Plywood Corporation of such threatened re-negotiation?

A. The Harbor Plywood Corporation was probably advised as early as the P.F.I., for the reason that Mr. Daniels, who was the president of the Harbor Plywood Corporation, accompanied me to Washington many times during the war. We were both of us on many committees during the war period, and he and other plywood manufacturers were immediately informed of the re-negotiation question which attached, in my opinion, a condition to the payment of credit memoranda until the question of re-negotiation had been cleared up. Subsequently, as the record shows, I advised Mr. *Relf*, and the individual companies that, in my opinion, the credit memoranda could not be paid until either the re-negotiation had been actually had and disposed of or until the statute had run on the re-negotiation, as an examination of the statute showed that re-negotiation ran within the one year after the end of the fiscal year, and if no action was taken by the particular government agency which had the power to re-negotiate.

Mr. Doolittle: I might invite your Honor's at-

(Testimony of Alfred J. Schweppe.)

tention to Exhibit 14-N, attached to the stipulation, in which such advice was reduced to writing.

A. (Continuing.) The result of it was, because of the position of Treasury Procurement that the P.F.I. was the only contracting party, and that it did not know the members of the P.F.I., that P.F.I. was therefore re-negotiable, then the P.F.I. held up the payments of the credit memoranda until the question of re-negotiation was cleared up.

Speaking specifically of Harbor Plywood Corporation, Mr. Daniels and I went to Washington many times together, and I informed him, and he acquiesced and agreed, as did others, that the money should not be paid; they didn't want to take it into the accounts and later have to send it back so that the P.F.I. could meet the re-negotiation liability. So it was understood between the P.F.I. and the companies that the actual payments should be held up until the legal condition which the Government had attached to the payment by the P.F.I. should be removed.

Q. Did the action of the Executive Committee in delaying payment, as set forth in the letter to the members of April 24, 1943—was that action ratified by the Harbor Plywood Corporation?

A. Yes; as a matter of fact, not only by the members specifically agreeing that the money should be retained until the question should be cleared up, but that is borne out by the fact that the money was not actually paid, a great deal of it, until 1946 when the question was clearly out of the way.



(Testimony of Alfred J. Schweppe.)

There is another point I should testify to, because I knew it as counsel for the P.F.I., whose meetings I attended. I attended one at 9:30 o'clock this morning because Mr. *Relf* is going to Europe, and he called an emergency meeting for 9:30 o'clock, and that is the reason we could not be here at that time.

I think the record shows that the 1943 memorandum was not paid until December of 1944, and I think the 1945—the 1944 and 1945 memoranda were not paid, the 1944 one until January of 1946 and the 1945 memorandum until July of 1946.

There is a further factor that is lurking in the records, which is shown in the record, which I think I should mention. As I stated a moment ago, the only customer that the P.F.I. has had and done business with was the government of the United States, and the Government was characteristically slow in meeting its obligation. That is because there was a great deal of red tape, which had to be untangled, which there usually is.

Q. That reference is contained in Joint Exhibit 18-R, the minutes of the executive meeting of April 25, 1944.

A. So actually the fact is, and Mr. *Relf* will confirm it if it should become necessary to recall him, the further fact that the P.F.I. didn't pay the credit memoranda until the P.F.I. had the money to pay; so the only way they could pay the credit memoranda to the members, short of receiving payment from the Government, would be by going to



(Testimony of Alfred J. Schweppe.)

the banks. But they finally said, "We will take a chance on 1943." But the 1944 payment was not made until January of 1946, and the 1945 one was not paid until July of 1946, solely because short of assessing its members, and short of borrowing, the P.F.I didn't have the money to pay its members.

I will say that I have been a party to this from the beginning, and I think I state it realistically, with the question of re-negotiability hanging over the Pacific Forest Industries, with the Government asserting its claim, and with the Treasury Department taking its position as outlined with respect to re-negotiability, no counsel could afford to advise them to pay out the money before re-negotiation was had and disposed of, since they would have to re-assess their members in case of re-negotiation and necessity for such action.

Q. Calling your attention to Joint Exhibit 11-K, addressed to the P.F.I., dated June 21, 1944, in which it is stated, "While such notice does not operate as a release of your liability under the Renegotiation Statute, nevertheless, in the absence of further developments, no further action is contemplated." Did such a letter, or a copy thereof, ever come to your attention? A. Yes, it did.

Q. Did it form the basis of any opinion?

A. Yes, I think I rendered a written opinion. I think the decision is in the record, or the opinion, rather.

Q. Your letter giving that opinion is Exhibit 14-N? A. Yes.

(Testimony of Alfred J. Schweppe.)

Q. Dated June 27, 1944? A. That's right.

Mr. Doolittle: You may inquire.

Cross-Examination

By Mr. Koken:

Q. Since you wanted to take a realistic view of the situation, why didn't you advise the P.F.I., which, of course, is not the petitioner here, to issue the credit memorandum, or not to issue the credit memorandum?

A. Not to issue the credit memorandum?

Q. Yes?

A. The credit memorandum, under the by-laws, was automatically issuable every year. Under the by-laws the credit memorandum is automatically given to each member, and the credit indicated. I think the record shows that each member was advised at the time he received the credit memorandum, beginning with the first one, and was advised with regard to each one that it was subject to renegotiation, and therefore completely up in the air as to what, if any portion, would be paid. In other words, it was perfectly proper to advise, "Here is what you have coming unless the Government takes it away. We don't know whether they will take anything or not, or take it all."

Q. Suppose you had been counsel for either party and had been asked by the holder of one of the credit memoranda—I have reference to the first two—to advise whether they were enforceable. What do you think would be your advice?

A. Well, I would have to know all the circum-

(Testimony of Alfred J. Schweppe.)

stances. As I testified a moment ago, the moment that this question arose the individual members of the P.F.I. all acquiesced and agreed that the money would be held. I don't believe after that position had been taken that they were enforceable.

Q. In what way did they agree?

A. They didn't want to get any money that they might have to pay back. They were told—at least it was my legal theory, which conformed to the theory of the Treasury Procurement, that the credit on the books was subject to a legal liability of the P.F.I. Under the by-laws, these credit memoranda were to be issued every year as shown by the books, but since there was a liability, a legal liability, attached to the credit memoranda, they were not unconditionally payable.

Q. Didn't you consider that money as belonging to the various members?

A. It only belonged to the members if there was no expense charged back, because the only thing that the P.F.I. pays back to the members is what is left after all the legal liabilities and the expenses have been paid. To carry it further, if you sued the P.F.I., it would have to be upon the ground that the credit memorandum was unconditionally payable; but because Congress had attached a contingent liability, therefore you could not recover as long as that was an unliquidated claim.

Q. When the amounts were finally determined at the end of each fiscal year and set up on the books of the P.F.I. and a credit given to the petitioner Harbor Plywood Corporation, don't you

(Testimony of Alfred J. Schweppe.)

think that at that moment that became the money of the Harbor Plywood Corporation?

A. No; not in my opinion. In my opinion it became a conditional credit to the Harbor Plywood Corporation, subject to the determination of whether or not the P.F.I. didn't have the additional liability which it must first meet under the by-laws of the corporation.

Mr. Doolittle: I should like to interrupt to this line of questioning as calling for a number of conclusions of the witness, which are perhaps best answered by the Court. If he wishes to ask the witness about his expressing an opinion to the petitioner, the Harbor Plywood Corporation, on this subject, I have no objection. But to take up the matter in vacuo, I think is not helpful for the Court, and I think is irrelevant.

The Court: I will overrule the objection.

The Witness: I am glad to answer the question.

Mr. Koken: In view of the circumstance that Mr. Schweppe is a very prominent attorney in this part of the country, and has acted as counsel for both the P.F.I. and the Harbor Plywood Corporation, I did not interpose any objection to anything that he said while on the stand because of his knowledge of the situation, and I was trying to elicit from him his reasons since he wanted to approach it from a practical point of view, as to why did he not advise the P.F.I. not to issue the credit memorandum.

A. As a matter of fact, the issuance of the credit



(Testimony of Alfred J. Schweppe.)

memorandum, in and of itself, was an act of no importance. The credit was already set up on the books. The credit memorandum was merely a duplicate piece of evidence handed directly to the members telling them that they had a credit on the books as of March 31, 1943, 1944, or 1945. The issuance of the credit memorandum in and of itself does not affect the situation at all, in my opinion, except to the extent that at the time of getting the credit memoranda they were advised of the question of re-negotiability which Congress had already set up when the credit memorandum was placed on the books on March 31.

Q. (By Mr. Koken): Let me draw your attention to the credit memorandum issued as of March 31, 1944. I think we have stipulated that the Renegotiation Statute—that is, the Statute of Limitations expired on that particular one on May 11 of the following year, 1945? A. Yes.

Q. I would like to have you tell the Court why the P.F.I. did not make that payment covering the 1944 memorandum. A. In 1945?

Q. Yes.

A. I gave the answer to that a little while ago, because we didn't have the money. I pointed out the reason the 1944 memorandum was paid in 1946, in January, and the 1945 memorandum was paid in 1946, in July. The reason was that the P.F.I. didn't have the funds to pay until they actually got them. In other words, the P.F.I. had to wait until a year had run and for such additional time until they had

(Testimony of Alfred J. Schweppe.)

accumulated money to pay for the memoranda to the respective members.

Q. Don't you believe it would have been enforceable subsequent to May 11, 1945?

A. Oh, Yes. I think after the year had run the members could have enforced it.

Q. Was there any discussion on your trips to Washington with the Treasury Procurement officials about re-negotiating the petitioner Harbor Plywood Corporation at all?

A. No; they were separately re-negotiated later on by the Army Engineers at San Francisco.

Mr. Doolittle: Together with a number of other plywood companies?

The Witness: That's right.

Mr. Doolittle: Did that include any export sales?

The Witness: No. It included only the re-negotiable business that Harbor Plywood Corporation had with the respective agencies that were conducting the re-negotiation. So that as respects the plywood industry, of which there were some twenty-eight or twenty-nine companies, as a result of some conferences at Washington, the Army, the Navy, and the Air Corps jointly re-negotiated the plywood industry through the Army Engineers. There was only one re-negotiation. The Treasury Procurement dealt only with the P.F.I., but the war agencies had only one re-negotiation with the plywood company.

Q. (By Mr. Koken): Was the P.F.I. re-negotiated in any one of those years?

A. No. Actually the P.F.I. filed its papers, as

(Testimony of Alfred J. Schweppe.)

required by the Act, and we have in the record one letter in which they say, "You are subject to re-negotiation, but after looking at your figures, we are not going to re-negotiate."

Q. But they did not re-negotiate?

A. No, they did not. In later years, we didn't even get such a letter. The Statute took care of it, which provided that unless an agency took care of the matter during that year's period, the statute automatically ran.

Mr. Koken: I have no further questions.

Mr. Doolittle: I have no further question.

(Witness excused.)

Mr. Doolittle The petitioner rests.

Mr. Koken: The respondent rests.

The Court: What is your pleasure, gentlemen, with respect to briefs?

Mr. Doolittle: I would like to inquire as to practice concerning the availability of copies of the transcript. Are those available?

The Court: You will have to make your arrangements with the reporter. The petitioner will be given forty-five days for the filing of the original brief, which will be July 29, for the petitioner's original brief. Respondent's answering brief will be thirty days after, or, specifically, August 29; the reply brief will be twenty days thereafter, which will be on or before September 19th.

(Whereupon, at 11:05 o'clock a.m., June 14, 1949, hearing concluded.)

The Tax Court of the United States

Docket No. 20729

HARBOR PLYWOOD CORPORATION,  
Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Promulgated January 31, 1950.

## FINDINGS OF FACT AND OPINION

Petitioner was a member stockholder of a cooperative nonprofit association organized as a corporation under the laws of the State of Washington (Rem. Rev. Stat., §§ 3904-3923) to engage in the export of Plywood and other forest products as authorized by the Webb Export Trade Act. During each of the taxable years 1943, 1944, and 1945, the association, pursuant to its bylaws, issued to petitioner a credit memorandum, representing petitioner's pro rata share of the excess of the association's income over its expenses for the year, and credited such amounts to petitioner in its books. In each instance, the association notified petitioner that it would not distribute the additional amounts represented by the credit memorandums until it had been settled whether it was subject to renegotiation, as the Government was contending. Both the petitioner and the association kept their books on the accrual basis. Held, that the amounts represented by the



credit memorandums accrued and are taxable to petitioner in the years when the credit memorandums were received.

WARREN A. DOOLITTLE, ESQ.,

For the petitioner.

WILLIAM E. KOKEN, ESQ.,

For the respondent.

This proceeding involves deficiencies in income and excess profits taxes as follows:

Year	Income Tax	Excess Profits Tax
1943 .....	—	\$95,028.66
1944 .....	—	17,407.58
1945 .....	\$24,219.57	—

A portion of the above deficiencies are not contested in this proceeding and have been assessed by respondent since the mailing of the notice of deficiency.

The parties have filed a written stipulation which covers most of the essential facts.

### Findings of Fact

The facts stipulated are found accordingly. Those facts and the additional facts shown by the evidence may be stated as follows:

Petitioner is a Delaware corporation organized in 1929, with its principal place of business located at Hoquiam, Washington. It was engaged, during the taxable years involved, in the business of manu-

facturing and distributing plywood, doors and other building materials. It kept its books and made its returns on an accrual basis and for a calendar year. Its returns were filed with the collector of internal revenue for the district of Washington.

Petitioner was one of about 25 stockholder members of a cooperative selling association, Pacific Forest Industries. That company, hereinafter referred to as Pacific, was organized as a corporation under the laws of the State of Washington solely for the purpose of exporting plywood and other forest products, as authorized under the provisions of the Webb Export Trade Act. At the close of its accounting year, and pursuant to Article XIII<sup>1</sup> of

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<sup>1</sup>Article XIII.

\* \* \*

2. It is not the purpose of this Association to make a profit; and the commission charged and remuneration received by the Association shall be the cost of transacting its business as sales agent, plus the cost of developing new foreign markets.

3. If during any fiscal year the total commissions and remuneration received by this Association in such fiscal year exceeds the amount that has been incurred during said fiscal year for the payment by the Association of its expenses, including the cost of market development, then, unless the Board of Trustees by resolution shall direct otherwise, the Treasurer shall, before closing the books as of the close of said fiscal year, return or credit such excess to the accounts of the respective members and associate members, as an addition to the purchase price of the merchandise sold by them \* \* \*.

its bylaws, it credited to its members all of its income for the year in excess of its operating expenses. Its income consisted of commissions on sales which it made on behalf of its members. It operated on the basis of a fiscal year ending March 31.

At the close of each of its fiscal years 1943, 1944, and 1945, Pacific issued to petitioner a credit memorandum representing petitioner's proportionate share of the excessive commissions which had been charged to the members on the sales of their products during the year in the respective amounts of \$11,591.36, \$33,113.41, and \$15,996.95. The face amount of each such credit memorandum was credited to the petitioner on the books of the association as of the date of its issuance and was claimed and allowed as an exclusion from gross income in the return filed by Pacific for that year.

In issuing to petitioner the credit memorandum for the year ended March 31, 1943, Pacific wrote to the petitioner in a letter dated April 24, 1943, as follows:

We are pleased to enclose Credit Memorandum to cover price adjustment on orders supplied by you and shipped by us during the period April 1st, 1942, through March 31st, 1943. The amount represents slightly more than the 6% commission deducted by us when settling your invoices. This means that P.F.I. business during the past fiscal year was handled at no expense to you and we hope to be able to continue on this basis.

May we point out, however, that the Treasury Department has filed with us a request for renegotiation of the contracts which we have accepted and are filling. It is, therefore, impossible to distribute the additional price evidenced by the enclosed Credit Memorandum until the results of the renegotiation are known. We believe, however, that the results will be favorable since, in the first place, we are a non-profit organization and secondly, all plywood which we have shipped has gone outside the Continental United States and thus the contracts should not be subject to renegotiation under the law.

Each of the other credit memorandums for the fiscal years 1944 and 1945 was issued subject to the same restriction as to payment. Petitioner at all times maintained that it was not subject to renegotiation and was finally sustained in that contention.

The renegotiation of Pacific for its fiscal years ended 1943, 1944, and 1945 was barred by the running of the statute of limitations on the dates of March 31, 1944, May 11, 1945, and May 29, 1946, respectively.

Pacific paid the credit memorandums issued to petitioner for 1943, 1944 and 1945 in cash on the dates of December 12, 1944, January 29, 1946, and July 23, 1946, respectively. The delay of these payments beyond the dates of expiration of the statute of limitations on renegotiation was due to the fact that Pacific had not collected for all of its sales and



did not have sufficient cash on hand to make the payments sooner.

Petitioner reported the income represented by the credit memorandums in the years when it received the cash payments on them. The respondent determined that the amounts accrued and were taxable to petitioner when the credit memorandums were received. Both parties make the alternative contention that the running of the statute of limitations on renegotiation of petitioner determined the time of the accrual and the time for reporting each of the credit memorandums.

### Opinion

LeMire, Judge:

Our sole question here is whether the amounts represented by the credit memorandums issued by Pacific are taxable to petitioner in the years when it received them, as contended by the respondent, or in the years when they were paid by Pacific, as petitioner contends; or, as both parties contend in the alternative, in the years when renegotiation of Pacific became barred by the statute of limitations.

A taxpayer keeping its books and making its returns on an accrual basis must report income when the right to receive it becomes fixed. *Spring City Foundry Co. v. Commissioner*, 292 U. S. 182. In *Liebes & Co. v. Commissioner*, 90 Fed. (2d) 932, the court said, after a thorough review of the leading cases dealing with the different aspects of the accrual question:

The complete definition would therefore seem to be that income accrues to a taxpayer, when there arises to him a fixed or unconditional right to receive it, if there is a reasonable expectancy that the right will be converted into money or its equivalent.

If there is any contingency as to the taxpayer's right to the income, as distinguished from an uncertainty as to the time of its receipt, it is taxable in the year when the contingency is removed. *United States v. Safety Car Heating & Lighting Co.*, 297 U. S. 88. Here the income in dispute had already been earned and had been credited to the petitioner on the books of Pacific when the credit memorandums were issued. There was no contingency as to the amount of income represented by the credit memorandums or of Pacific's right to receive it; nor was there any contingency as to petitioner's right to whatever income might remain after renegotiation, should that occur. The mere possibility of renegotiation did not give rise to a liability which either Pacific or the petitioner could have accrued on its books, since it had not become fixed and was being strenuously protested by Pacific. No liability for renegotiation was set up in Pacific's books. Conceding that there was a possibility of renegotiation there was no way of even approximating the amount of excessive profits that might be claimed by the Government. See *Security Flour Mills Co. v. Commissioner*, 321 U. S. 281; *William Justin Petit*, 8 T. C. 228.

There can be no question but that Pacific, keeping its books on an accrual basis, was required to account for the entire amount of the commissions on sales made during the taxable years. It is now well settled, however, that cooperative associations, such as Pacific, engaged exclusively in selling the products of its stockholder members on a commission basis are not taxable on the income which, pursuant to their articles of incorporation or bylaws, or contracts, they are required to return to the stockholders each year as patronage dividends or rebates. See *San Joaquin Valley Poultry Producers' Assn.*, 136 Fed. (2d) 382; *Midland Cooperative Wholesale*, 44 B.T.A. 824; *United Cooperatives, Inc.*, 4 T. C. 93. This is true whether the amounts are actually paid to the members in cash during the taxable year or merely credited to them on the books of the association. *Midland Cooperative Wholesale*, *supra*. The reason for this rule is that the patronage dividends or rebates are at all times the property of the member stockholders, and nonmembers, and that the selling association is an agent or trustee or mere conduit for the income.

The petitioner devotes a substantial portion of its opening brief to the argument that it did not constructively receive the amounts represented by the credit memorandums in the years when they were issued. The question of constructive receipt is not involved. It might have been had the petitioner reported on a cash basis rather than an accrual basis. The Commissioner has not determined and

does not now argue that petitioner constructively received any of the disputed income. Cases like *Kay Kimbell*, 41 B.T.A. 940, and *Howard Veit*, 8 T. C. 809, which petitioner cites, have no application here.

We think that the respondent has correctly determined that the amounts represented by the credit memorandums issued to petitioner in each of the taxable years accrued and are taxable to petitioner in those years.

Reviewed by the Court.

Decision will be entered under Rule 50.

Disney, J., dissenting:

The majority opinion recognizes that a taxpayer on the accrual basis is to report income when the right to receive it becomes fixed. At the time that the petitioner was informed, by the cooperative corporation, that a credit memorandum was being enclosed for the year, the petitioner was also informed that the Treasury Department had requested renegotiation and the distribution could not be made until the results of renegotiation were known. It seems to me this is a case where the right to receive income had not become fixed but that there was a very great contingency. Until that contingency was removed I do not think that item was accrued. The majority opinion appears to treat the renegotiation as not of sufficient importance to constitute a contingency. It is referred to as "the mere possibility of renegotiation." Obviously it was a probability



for the Treasury Department had asked for it. The result of renegotiation was altogether problematical and contingent. In my opinion, the taxpayer upon the accrual basis should not be required to accrue such an uncertain and contingent item. I, therefore, dissent.

Served February 1, 1950.

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[Title of Tax Court and Cause.]

### COMPUTATION BY PARTIES FOR ENTRY OF DECISION

The attached proposed computation is submitted on behalf of the parties to the Tax Court of the United States in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Tax Court, without prejudice to the parties' rights to contest the correctness of the decision entered herein by the Tax Court, pursuant to the statutes in such cases made and provided.

/s/ WARREN A. DOOLITTLE,  
Counsel for the Petitioner.

/s/ CHARLES OLIPHANT, W.H.R.  
Chief Counsel, Bureau of Internal Revenue, Coun-  
sel for the Respondent.

C-TS:NWD:RECOMP  
S:WEK:WMG

Recomputation Statement

Petitioner: Harbor Plywood Corporation  
Box 300  
Hoquiam, Washington

Docket No.: 20729

Tax Liability for the Taxable Years Ended December 31, 1943,  
December 31, 1944, and December 31, 1945

Claims for refund Nos.: 3407808 and 000663 filed for 1943  
and 000661 and 000662 filed for 1944

Income Tax				Over-
Year	Liability	Assessed	Deficiency	assessment
1943.....	\$129,776.21	\$162,395.08		\$32,618.87
1944.....	118,369.30	120,690.55		2,321.25
1945.....	90,078.97	65,859.40	\$ 24,219.57	
Total.....	\$338,224.48	\$348,945.03	\$ 24,219.57	\$34,940.12

  

Excess Profits Tax			
1943.....	\$225,388.25	\$130,359.59	\$ 95,028.66
1944.....	136,200.54	118,792.96	17,407.58
Total.....	\$361,588.79	\$249,152.55	\$112,436.24

Note: Payment of \$28,825.89 on September 29, 1948, covering net deficiencies for 1943, 1944 and 1945 resulting from unprotested adjustments, has not been assessed and is being held in Collector's unidentified Account No. 1-500078-50, also the unapplied balance of \$10,608.96 of a payment made on December 27, 1945 is being held in Collector's unidentified Account No. 1-500030-47.

Recomputation of tax liability prepared in accordance with the memorandum opinion of The Tax Court of the United States promulgated January 31, 1950.

## Taxable Year Ended December 31, 1943

Schedule 1  
Tax Liability

## Income Tax

Liability disclosed by statutory notice of deficiency dated July 23, 1948 .....	\$129,776.21		
Previously assessed, Account No. 7-410043.....	\$107,032.83		
Additional, Section 3780(b), July 16, 1946..	55,362.25	162,395.08	
Over-assessment of income tax .....		\$ 32,618.87	

## Excess Profits Tax

Liability disclosed by statutory notice of deficiency dated July 23, 1948 .....	\$225,388.25		
Previously assessed, Account No. 7-400054 .....	\$248,705.68		
Less: Tentative allowance, Schedule No. A.M. 375 .....	\$ 6,237.54		
Tentative allowance, Schedule No. I:T:CB:868 .....	112,108.55	118,346.09	130,359.59
Deficiency in excess profits tax .....		\$ 95,028.66	

## Taxable Year Ended December 31, 1944

Schedule 2  
Tax Liability

## Income Tax

Liability disclosed by statutory notice of deficiency dated July 23, 1948 .....	\$118,369.30		
Previously assessed, Account No. 5-410148 .....	120,690.55		
Over-assessment of income tax .....		\$ 2,321.25	

## Excess Profits Tax

Liability disclosed by statutory notice of deficiency dated July 23, 1948 .....	\$136,200.54		
Previously assessed, Account No. 5-400104 .....	\$172,175.20		
Less: Section 784(a) credit allowed .....	\$17,217.52		
Section 3806(b)(1) credit allowed .....	23,939.99		
Tentative allowance, Schedule No. A.M. 375 .....	12,224.73	53,382.24	118,792.96
Deficiency in excess profits tax .....		\$ 17,407.58	

Taxable Year Ended December 31, 1945

Schedule 3  
Tax Liability

Income Tax

Liability disclosed by the statutory notice of deficiency dated July 23, 1948 .....	\$90,078.97
Previously assessed, Account No. 6-410075 .....	65,859.40
	<hr/>
Deficiency in income tax .....	\$24,219.57

Note: Payment of \$28,825.89 on September 29, 1948, covering net deficiencies for 1943, 1944 and 1945 resulting from unprotested adjustments, has not been assessed and is being held in Collector's unidentified Account No. 1-500078-50, also the unapplied balance of \$10,608.96 of a payment made on December 27, 1945, is being held in Collector's unidentified Account No. 1-500030-47.



C-TS:NWD  
S:WEK:WMG

## Statement of Account

Petitioner: Harbor Plywood Corporation  
Box 300  
Hoquiam, Washington

Docket No. : 20729

Taxable Years Ended December 31, 1943, 1944 and 1945

1943

Income tax liability .....			\$129,776.21
Income tax assessed, Account No. 7-410043 .....	\$107,032.83		
Additional, 7-Spl #6-04C-46 .....	55,362.25	162,395.08	
Over-assessment of income tax to be abated .....		\$ 32,618.87	
Income tax liability .....		\$129,776.21	
Income tax paid:			
March 10, 1944 .....	\$ 6,214.21		
June 30, 1944 .....	26,758.21		
March 10, 1944 .....	20,544.00		
September 14, 1944 .....	26,758.20		
December 14, 1944 .....	26,758.21		
Credit .....	55,362.25*	162,395.08	
Overpayment of income tax .....		\$ 32,618.87	
Excess profits tax liability .....		\$225,388.25	
Excess profits tax assessed,			
Account No. 7-400054 .....	\$248,705.68		
Less: Tentative allowance			
Schedule No. AM-375 .....	\$ 6,237.54		
Tentative allowance,			
Schedule No. IT:CB-868 .....	112,108.55	118,346.09	130,359.59
Deficiency in assessment .....		\$ 95,028.66	
Excess profits tax liability .....		\$225,388.25	
Less: Excess profits tax paid:			
June 30, 1944 .....	\$ 73,741.79		
March 10, 1944 .....	69,027.79		
September 14, 1944 .....	43,759.68		
December 14, 1944 .....	62,176.42	\$248,705.68	
Less: Amount applied against excess			
profits tax for 1944 .....	\$ 6,237.54**		
Amount refunded .....	56,746.30		
Amount applied against add'l.			
income tax for 1943 .....	55,362.25*	118,346.09	130,359.59
Deficiency in payment .....		\$ 95,028.66	

1944

Income tax liability .....			\$118,369.30
Income tax assessed, Account No. 5-410148 .....			120,690.55
<hr/>			
Over-assessment of income tax to be abated .....		\$	2,321.25
Income tax liability .....			\$118,369.30
Income tax paid:			
May 15, 1945 .....	\$	27,250.00	
March 15, 1945 .....		2,923.00	
June 15, 1945 .....		30,172.28	
September 6, 1945 .....		30,172.63	
December 14, 1945 .....		30,172.64	120,690.55
<hr/>			
Overpayment of income tax .....	\$	2,321.25	
Excess profits tax liability .....			\$136,200.54
Excess profits tax assessed,			
Account No. 5-400104 .....		\$172,175.20	
Less: Abatement, Schedule			
No. AM-375 .....	\$	12,224.73	
Abatement, Schedule			
No. 194 .....		17,217.52	
Section 3806(b)(1) credit..	23,939.99	53,382.24	118,792.96
<hr/>			
Deficiency in assessment .....			\$ 17,407.58
Excess profits tax liability .....			\$136,200.54
Excess profits tax paid:			
March 15, 1945 .....	\$	59,827.00	
June 15, 1945 .....		26,260.60	
September 6, 1945 .....		34,435.04	
December 14, 1945 .....		15,972.77	
Credit .....	**6,237.54	\$142,732.95	
<hr/>			
Less: Credit under Section 3806(b)(1) .....	23,939.99	118,792.96	
<hr/>			
Deficiency in payment .....			\$ 17,407.58

1945

Income tax liability .....			\$ 90,078.97
Income tax assessed, Account No. 6-410075 .....			65,859.40
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Deficiency in assessment .....			\$ 24,219.57
Income tax liability .....			\$ 90,078.97
Income tax paid:			
June 14, 1946 .....	\$	2,929.70	
March 14, 1946 .....		30,000.00	
September 6, 1946 .....		16,464.85	
January 2, 1947 .....		16,464.85	65,859.40
<hr/>			
Deficiency in payment .....			\$ 24,219.57
Statutory notice of deficiency dated July 23, 1948.			
Claims for refund filed:			

3407808 and 000663 for 1943

000661 and 000662 for 1944

Received and Filed T. C. U. S. April 21, 1950.

The Tax Court of the United States  
Washington

Docket No. 20729

HARBOR PLYWOOD CORPORATION,  
Petitioner,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the Court's Opinion, promulgated January 31, 1950, the parties filed an agreed computation. Therefore, it is

Decided that there are deficiencies in excess profits tax of \$95,028.66 and \$17,407.58 for 1943 and 1944, respectively; that there is a deficiency of \$24,219.57 in income tax for 1945.

[Seal]     /s/ C. P. LEMIRE,  
Judge.

Entered Apr. 25, 1950.

Served Apr. 27, 1950.

United States Circuit Court of Appeals  
for the Ninth Circuit

Docket No. 20729

HARBOR PLYWOOD CORPORATION,  
Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Appellee.

PETITION FOR REVIEW OF THE DECISION  
OF THE TAX COURT OF THE UNITED  
STATES

To the Honorable the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

Harbor Plywood Corporation, the appellant in this case (petitioner below), by Warren A. Doolittle, its attorney, hereby files its petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States entered herein on April 25, 1950, which decision approved the deficiencies determined by the Commissioner of Internal Revenue in excess profits taxes of \$95,028.66 and \$17,407.58 for 1943 and 1944, respectively, and a deficiency of \$24,219.57 in income tax for 1945.

In support of this petition for review, filed in pursuance of the provisions of Sections 1141 and 1142 of the Internal Revenue Code, for a review of such decision, your petitioner respectfully shows to this honorable court, as follows:



## I. Statement of the Nature of the Controversy

This case presents the very simple question as to the proper time for the reporting of income by the petitioner, Harbor Plywood Corporation, an accrual basis taxpayer. The income in question consists of three separate refunds received by the taxpayer from Pacific Forest Industries, a corporation engaged solely in the export of plywood and other forest products for its member stockholders. The taxpayer at all times material was a member stockholder in Pacific Forest Industries. The taxpayer was and is in the business of manufacturing and distributing plywood, doors and building material. It makes no sales in the export trade of its plywood or other forest products; instead its exports are marketed through Pacific Forest Industries, the latter being a corporation authorized by the Webb Export Trade Act. During each of the taxable years, 1943, 1944 and 1945, Pacific Forest Industries, pursuant to its by-laws, issued to the taxpayer a credit memorandum, representing the taxpayer's pro-rata share of the excess of Pacific Forest Industries income over its expenses for the year, and the amounts of each credit memorandum were credited to the taxpayer on the books of account of Pacific Forest Industries. Similar credit memoranda were issued to the other 18 companies who were stockholder members. At all times involved in this case Pacific Forest Industries was threatened in writing with the actual renegotiation of its profits by the Treasury Department Procure-

ment Division handling lend-lease contracts as provided by the Renegotiation Act of 1942. Because of this threat each credit memorandum issued to the taxpayer and the other members for each year was issued subject to the possible renegotiation of Pacific Forest Industries; that is to say, the Pacific Forest Industries notified the taxpayer and the other stockholder members as the credit memoranda were issued for each year, that it would not distribute the additional amounts represented by the credit memoranda until it had been settled whether or not Pacific Forest Industries was subject to renegotiation as the Government was contending.

The renegotiation of Pacific Forest Industries for its fiscal years ended 1943, 1944 and 1945, was barred by the running of the statute of limitations on the dates of March 31, 1944, May 11, 1945, May 29, 1946, respectively. Pacific Forest Industries paid the credit memoranda issued to the taxpayer for 1943, 1944, and 1945 in cash on the dates of December 12, 1944, January 29, 1946, and July 23, 1946, respectively. The delay of these payments beyond the dates of expiration of the statute of limitations on renegotiation for each year was due to the fact that Pacific Forest Industries had not collected for all of its sales (all of which were made to the Government for Lend-Lease) and did not have sufficient cash on hand to make the payments sooner.

The taxpayer reported the income represented by the credit memoranda in the years when it received the cash payments on them. The Commissioner of Internal Revenue determined that the

amounts should have been accrued as income and were taxable to the taxpayer when each credit memorandum was received. Both parties in the Tax Court made the alternative contention that the running of the statute of limitations on renegotiation of Pacific Forest Industries determined the time of accrual and the time for reporting as taxable income each of the credit memoranda by the taxpayer, Harbor Plywood Corporation.

The Tax Court held, and the taxpayer disagrees with the holding, that the amounts represented by the credit memoranda accrued and were taxable to the taxpayer, Harbor Plywood Corporation, in the years when the credit memoranda were issued, notwithstanding that the Tax Court also found that they were issued expressly "subject to Renegotiation."

The controversy before this Court involves the following questions:

1. Was the Tax Court correct in holding that the amounts represented by the credit memoranda which were expressly issued "subject to Renegotiation," constituted a part of the taxable income of the taxpayer, Harbor Plywood Corporation, and should have been accrued in the taxable year in which each credit memorandum was issued by Pacific Forest Industries? or

2. Should the amounts represented by each credit memorandum have been accrued and have been taxable to Harbor Plywood Corporation for the year during which the statute of limitations expired on the renegotiability of Pacific Forest Indus-

tries, as contended in the alternative by both parties?  
or

3. Should the amounts of the credit memoranda have been reported as income for the year in which each credit memorandum was paid in cash to the taxpayer by Pacific Forest Industries?

## II. Designation of Court of Review and Allegations as to Venue

The appellant is a corporation duly organized and existing under the laws of the State of Delaware, and has its principal place of business at Hoquiam, Washington.

The appellant filed its income and excess profits tax returns for the years in question, namely, the taxable calendar years, 1943, 1944 and 1945, with the Collector of Internal Revenue for the Washington District, which office is situated in the City of Tacoma, State of Washington, and is located within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit where this review is sought pursuant to the provisions of Internal Revenue Code, Sections 1141 and 1142.

## III. Assignments of Errors

The appellant assigns as errors the following acts and omissions of the Tax Court of the United States:

1. The conclusion of the Tax Court of the United States that the amounts represented by the credit memoranda issued to the taxpayer, Harbor Ply-



wood Corporation, in each of the taxable years by Pacific Forest Industries accrued and were taxable to the taxpayer in the year of their issuance, notwithstanding that they were issued, as the Tax Court properly found, "subject to renegotiation" for all years.

2. The holding of the Tax Court of the United States that when the credit memoranda were issued subject to renegotiation there was no contingency as to the amount of income represented by the credit memoranda or of Harbor's right to receive it.

3. The opinion of the Tax Court that the threat of renegotiation was a "mere possibility of renegotiation," as being contrary to the evidence.

4. The opinion of the Tax Court that the "mere possibility" of the renegotiation of Pacific Forest Industries under the Renegotiation Act of 1942 had no effect upon Harbor Plywood Corporation's duty to accrue the income represented by the credit memoranda which were issued with notice that they were issued subject to renegotiation.

5. The opinion of the Tax Court that the method of accounting and the time for deducting expenses by Pacific Forest Industries is in any way determinative of the method of accruing and the time for reporting income by the taxpayer, Harbor Plywood Corporation.

6. The reliance of the Tax Court on the cases dealing with patronage dividends by cooperatives, none of which were concerned with a threatened

or an actual renegotiation of a cooperative's income under the Renegotiation Act of 1942.

7. The failure of the Tax Court of the United States to recognize that, notwithstanding that the taxpayer is an accrual basis taxpayer, certain of the concepts and cases decided under the principal of "constructive receipt" of income by cash basis taxpayers are relevant and persuasive by way of analogy.

8. The making and entry by the Tax Court of the United States of its decision of April 25, 1950.

9. The failure of the Tax Court to find that these credits from Pacific Forest Industries were not taxable income to taxpayer, Harbor Plywood Corporation, until paid in cash; or, in the alternative, the failure of the Tax Court to find, under the true rule of "accrued income," that when the credit memoranda were issued, the taxpayer had no fixed and unconditional right to the amount of each memorandum because at such time

(a) there was a contingency which might preclude ultimate payment, namely, the possible Renegotiation of Pacific Forest Industries;

(b) no reasonable expectancy that the right would be converted into money could exist so long as such unresolved and intervening legal right as was created by the Renegotiation Act itself was not barred by the statute of limitations; and

(c) there was the further contingency which

precluded payment imposed by Pacific Forest Industries itself, namely, the fact that it notified the taxpayer in writing that each credit memorandum was issued "subject to renegotiation,"

and therefore the amounts represented by said credit memoranda could not be accrued as taxable income by the taxpayer, Harbor Plywood Corporation, until the statute of limitations barred the Renegotiation of Pacific Forest Industries' income.

The appellant herein being aggrieved by the said decision of the Tax Court of the United States and by the said errors and omissions heretofore referred to, desires to obtain a review of the said decision, and of all the proceedings heretofore had before the Tax Court of the United States, by the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the errors and omissions of the Tax Court of the United States be corrected and that the Tax Court of the United States be directed to enter an order in the above-entitled cause of either (1) "No deficiency"; or, in the alternative, (2) that the amounts represented by the credit memoranda issued by Pacific Forest Industries to Harbor Plywood Corporation were taxable to Harbor Plywood Corporation and should have been accrued by it in the years when the statute of limitations barred the renegotiation of Pacific Forest Industries, and not before.

/s/ WARREN A. DOOLITTLE,  
Attorney for Appellant.

Received and filed T.C.U.S. July 17, 1950.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To Chief Counsel, Bureau of Internal Revenue,  
Washington, D. C.:

Please Take Notice that the appellant, Harbor Plywood Corporation, by Warren A. Doolittle, its attorney, on the 15th day of July, 1950, is mailing to the Clerk of the Tax Court of the United States at Washington, D. C., for filing, a Petition for Review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Tax Court heretofore entered on April 25, 1950, in the above-entitled cause.

A copy of the petition for review and the assignments of error as will be filed is hereto attached and served upon you.

Dated this 15th day of July, 1950.

/s/ WARREN A. DOOLITTLE,  
Attorney for Appellant.

Personal service of the foregoing Notice, together with a copy of the petition for review and assignments of error mentioned therein is hereby acknowledged this 17th day of July, 1950.

/s/ CHARLES OLIPHANT, CAR  
Chief Counsel, Bureau of Internal Revenue, Counsel  
for Appellee.

Received and filed T.C.U.S. July 26, 1950.



[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: Charles Oliphant, Chief Counsel, Bureau of  
Internal Revenue:

You are hereby notified that Harbor Plywood Corporation did, on the 17th day of July, 1950, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit, of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 19th day of July, 1950.

/s/ VICTOR S. MERSCH,  
Clerk The Tax Court  
Of the United States.

Service of copy of Petition for Review acknowledged this 19th day of July, 1950.

/s/ CHARLES OLIPHANT, CAR  
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

Filed T.C.U.S. July 19, 1950.

[Title of Court of Appeals and Cause.]

### PRAECIPE FOR RECORD

To the Clerk of The Tax Court of the United States:

You are hereby requested to prepare and certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with reference to the Petition for Review heretofore filed by the Appellant in the above-entitled cause, a transcript of the record in the above-entitled cause prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript the following documents or certified copies thereof:

1. Docket entries of all proceedings in the above-entitled cause before The Tax Court of the United States.

2. Pleadings before The Tax Court of the United States as follows:

(a) Petition filed in this cause on October 20, 1948.

(b) Respondent's Answer.

(c) Motion to Amend Petition, filed June 13, 1949.

(d) Amendment to Petition, verified May 27, 1949, and filed at hearing on June 13, 1949.

(e) Answer to Amendments to Petition and Amendment to Respondent's Answer.

3. Stipulation of Facts, including all exhibits

(joint exhibits 1-A to 15-O, inclusive) attached thereto.

4. Transcript of the proceedings, and evidence adduced at The Tax Court hearing held in room 304, United States Courthouse, Tacoma, Washington, June 14, 1949, including, but not limited to, joint exhibits 16-P to 22-V admitted in evidence at said hearing.

5. Findings of Fact and Opinion by The Tax Court of the United States, promulgated January 31, 1950, including the dissenting Opinion attached thereto.

6. Computation by parties for entry of decision.

7. Decision of The Tax Court of the United States entered April 25, 1950.

8. Petition for Review of the Decision of The Tax Court of the United States, filed by the Appellant in the above-entitled cause, and Notice of Filing Petition for Review with acknowledgment of service.

9. This Praecipe for Record.

/s/ WARREN A. DOOLITTLE,  
Attorney for Appellant.

Personal service of a copy of the foregoing Praecipe is hereby acknowledged, this 31st day of July, 1950.

/s/ CHARLES OLIPHANT, CAR  
Chief Counsel, Bureau of Internal Revenue, Counsel  
for Appellee.

Received and filed T.C.U.S. August 7, 1950.

[Title of Tax Court and Cause.]

### CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 14, inclusive, constitute and are all of the original papers and proceedings on file in my office, including Exhibits 1-A through 15-O, Attached to Stipulation of Facts and Exhibits 16-P through 22-V Admitted in Evidence, as called for by the Praecept for Record on Review in the proceeding before The Tax Court of the United States entitled: "Harbor Plywood Corporation v. Commissioner of Internal Revenue, Respondent," Docket No. 20729 and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 10th day of August, 1950.

[Seal]      /s/ VICTOR S. MERSCH,  
Clerk, Tax Court of the  
United States.



[Endorsed]: No. 12660. United States Circuit Court of Appeals for the Ninth Circuit. Harbor Plywood Corporation, a Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed August 21, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

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United States Circuit Court of Appeals  
for the Ninth Circuit

Case No. 12660

HARBOR PLYWOOD CORPORATION,  
Appellant,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Appellee.

STATEMENT OF POINTS AND DESIGNA-  
TION OF RECORD TO BE PRINTED

Comes now the Petitioner on Review herein and adopts as his Statement of Points on which he intends to rely on the Review herein the Assignments of Errors included in his Petition for Review within the Transcript of Record, and he also designates for printing the entire Transcript of Record

(specifically excepting from Document No. 9 thereof, however, Exhibits 20-T, 21-U and 22-V) transmitted to this Court by the Clerk of The Tax Court of the United States, together with this Statement and Designation.

/s/ WARREN A. DOOLITTLE,  
Attorney for Appellant.

Personal service of the foregoing Statement of Points and Designation of Record to be Printed is hereby acknowledged this 30th day of August, 1950.

/s/ THERON LAMAR CAUDLE,  
Ass't Att'y General,  
Counsel for Respondent.

[Endorsed]: Filed September 11, 1950.